

# Semiannual Report to Congress

*Office of Inspector General for the U.S. Department of Labor*





# A Message from the Inspector General

I am pleased to submit our *Semiannual Report to Congress* summarizing the activities of the U.S. Department of Labor (DOL or Department), Office of Inspector General (OIG), for the 6-month period ending March 31, 2023.

As reflected in our semiannual report, my office continues to highlight the major issues facing DOL through the OIG's independent audits and investigations. The OIG remains committed to conducting independent and objective oversight to improve DOL programs relied upon by millions of Americans.

During this reporting period, I testified before the U.S. House Committee on Ways and Means (February 2023) and the U.S. House Committee on Oversight and Accountability, Subcommittee on Government Operations and the Federal Workforce (March 2023) regarding our oversight of the unemployment insurance (UI) program during the COVID-19 pandemic. In addition to testifying on the OIG's oversight and significant concerns with DOL and the states' ability to expeditiously and efficiently deploy program benefits, I highlighted our three most significant challenges—data access, resource limitations, and the expiring statute of limitations related to UI fraud—in overseeing the UI program.



## Data Access

The barriers to the OIG's ongoing, timely, and complete access to state UI claimant data and wage records directly and adversely impact our ability to provide independent oversight to help DOL reduce improper payments in its programs. While DOL has facilitated temporary access to UI claimant data and wage records, the Department continues to interpret regulations as prohibiting the Employment and Training Administration (ETA) from requiring State Workforce Agencies (SWA) to provide UI data to the OIG for all audit and investigative purposes other than those involving specific instances of suspected fraud. This interpretation and subsequent guidance to SWAs contradict the Inspector General Act of 1978, as amended, which authorizes Inspector General access to DOL grantee information related to DOL programs, including SWAs' UI data.

## Resource Limitations

The OIG lacks sufficient resources to continue providing the same level of oversight of the UI program that it has over the last 3 years. Most of the supplemental funding that Congress appropriated to the OIG during the pandemic to fund oversight of expanded DOL programs and operations will be fully expended by the first or second quarter of Fiscal Year (FY) 2024. In addition, our FY 2021 and FY 2022 appropriations remained flat and the FY 2023 appropriation was \$11 million less than requested. As a result, the OIG had to cancel 10 audits and is currently in the process of reducing its workforce through attrition, which will result in fewer investigations and audits of the UI program.

## Statute of Limitations

Currently, the statute of limitations for many pandemic-related UI fraud cases will begin to expire in 2025 as the statutes most often used to prosecute UI fraud have 5-year limitations. We are concerned that, unless Congress acts to extend the statute of limitations for fraud associated with pandemic-related UI programs, many

groups and individuals that have defrauded the UI program may escape justice. The expansion of the statute of limitations would provide investigators and prosecutors time to pursue and hold accountable those who defrauded the UI program and victimized the American people during the pandemic.

Despite these challenges, OIG staff continues to deliver high-quality oversight. In total, during this reporting period, the OIG issued 11 audit reports with 42 recommendations for corrective action and identified approximately \$321 million in questioned costs. Among our many significant findings, we reported:

- ETA and states need to ensure the use of identity verification service contractors results in equitable access to UI benefits and secure biometric data;
- The Occupational Safety and Health Administration's (OSHA) enforcement activities did not sufficiently protect workers from pandemic health hazards;
- OSHA needs to better address complaints and referrals for increased worker safety;
- Three workers' compensation programs experienced dramatic increases in the use of telehealth during the first year of the pandemic compared to the prior year—with the Office of Workers' Compensation Programs (OWCP) paying more than \$7 million for 34 times more telehealth services; and
- OWCP did not effectively manage pharmaceutical spending in the Federal Employees' Compensation Act (FECA) program. We identified up to \$321 million in excess spending related to prescription drugs, and OWCP allowed thousands of FECA claimants to receive inappropriate, potentially lethal prescriptions.

The OIG's investigative work also yielded impressive results, with a total of 131 investigative reports issued / cases closed, 233 indictments, 270 convictions, and more than \$74 million in monetary accomplishments. Highlights of this work follow:

- A Virginia inmate was sentenced to 84 months in prison for obtaining pandemic UI benefits for other inmates;
- Two Minnesota women pled guilty to wire fraud for stealing approximately \$6 million in pandemic assistance funds;
- A Houston woman was sentenced in a multi-million-dollar kickback scheme that defrauded federal health care programs, including those administered by OWCP;
- A California woman was sentenced to 6 years in prison for defrauding health insurers by submitting claims for Botox injections; and
- A former union vice president was sentenced for his role in a union book selling scheme in which he abused his position by soliciting and accepting cash bribes from prospective union members in exchange for securing the bribe payers' admission to the union.

I would like to thank the OIG staff for their dedication to our important mission. It is a great privilege to lead such a top-notch group of professionals.

Finally, I appreciate the unwavering support of Congress and the Department on our shared goals of identifying improvements to DOL programs and operations and of protecting the interests and benefits of the nation's workers and retirees.



Larry D. Turner  
Inspector General



## OIG Mission

We serve the American people, DOL, and Congress by providing independent and objective oversight of Departmental programs through audits and investigations, and by combatting the influence of labor racketeering in the workplace.

## Core Values

### **Excellence**

We deliver relevant, quality, timely, high-impact products and services, through a workforce committed to accountability and the highest professional standards.

### **Integrity**

We adhere to the highest ethical principles and perform our work in an honest and trustworthy manner.

### **Independence**

We are committed to being free of conflicts of interest through objectivity and impartiality.

### **Service**

We are a unified team, vigilant to duty through dedicated public service.

### **Transparency**

We promote an environment of open communication through information sharing, accountability, and accurate reporting.

## Strategic Goals

**Goal 1:** Deliver timely, relevant, and high-impact results.

**Goal 2:** Foster an internal OIG culture that drives high performance and engagement.

**Goal 3:** Promote responsible stewardship of OIG financial and non-financial resources.



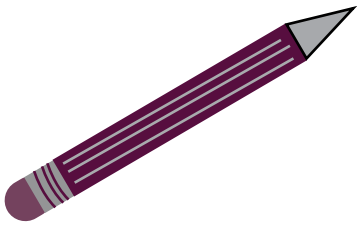
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# Audit Statistics

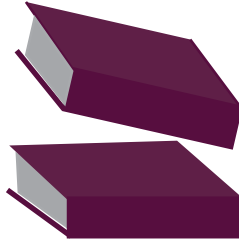
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Audits and Other Reports Issued



42

Recommendations for Corrective Action



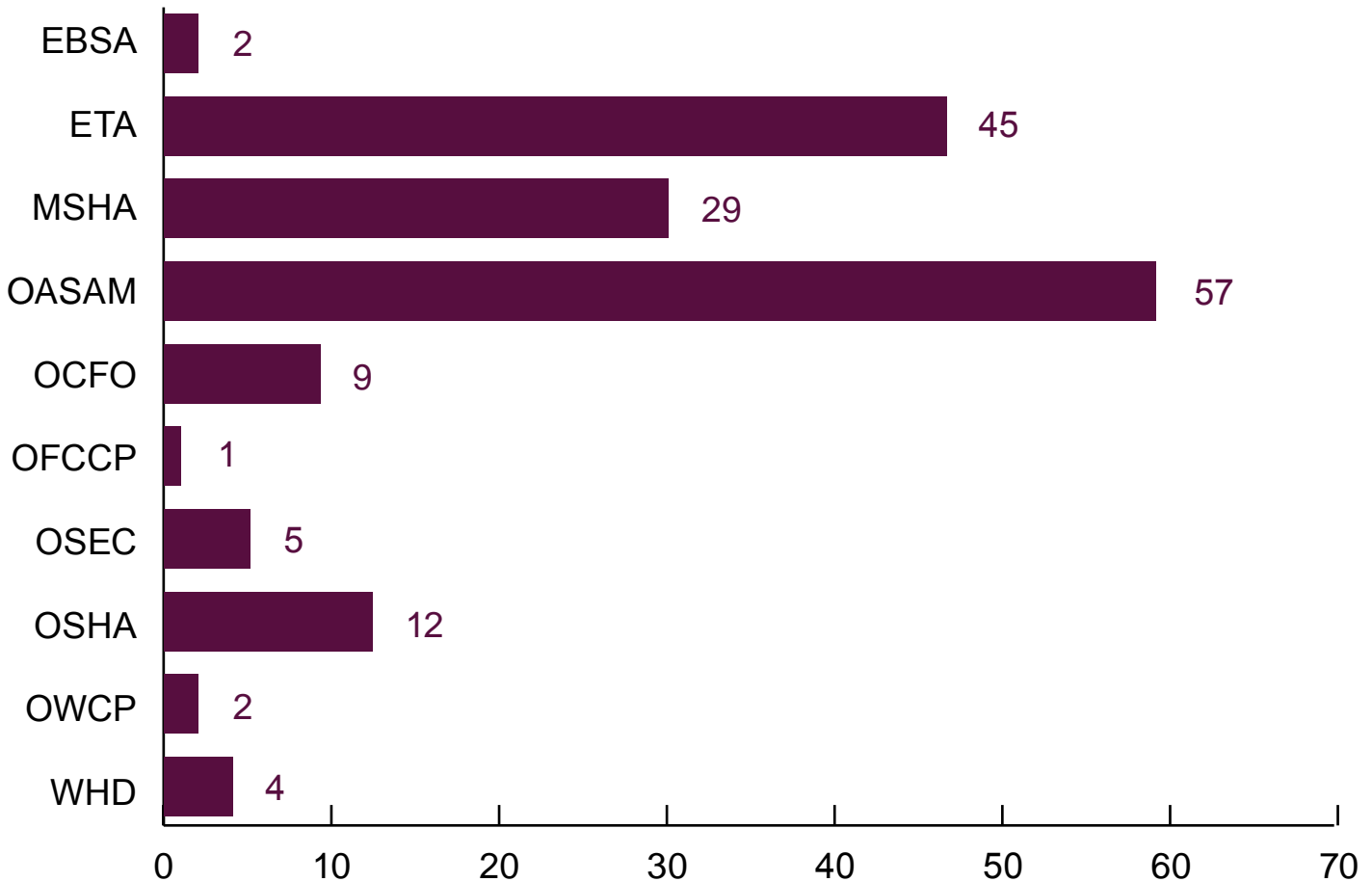
\$321 Million

in Funds Put to Better Use



## OIG Unimplemented Recommendations

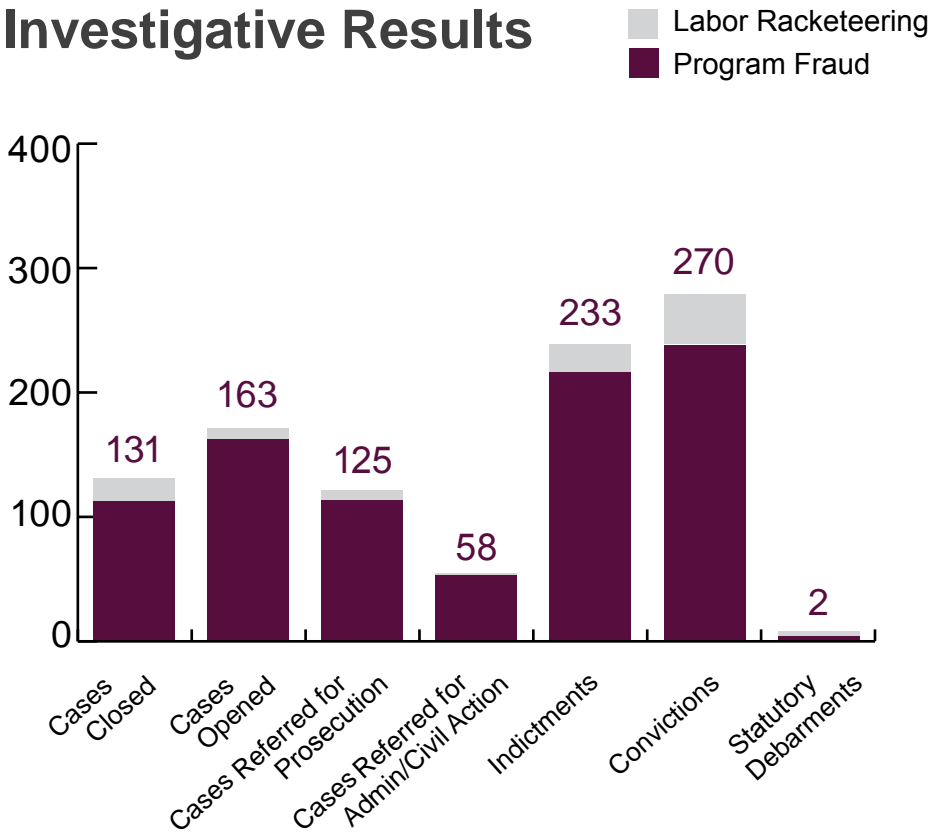
*OIG recommendations not fully implemented as of September 30, 2022*





# Investigative Statistics

## Investigative Results

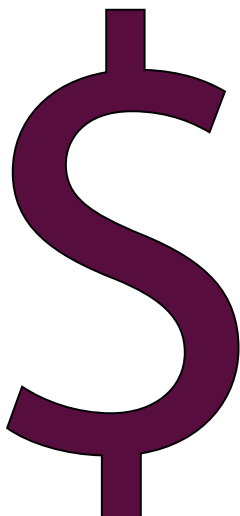


**163/131**



163 investigative cases opened and 131 cases closed

## Monetary Accomplishments



These include:

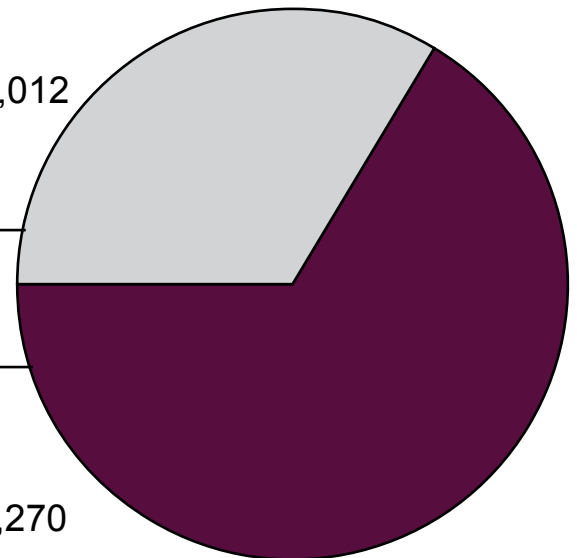
- Recoveries
- Cost-Efficiencies
- Restitutions
- Fines/Penalties
- Forfeitures
- Civil Monetary Actions

**\$74,404,283**

Total

\$25,421,012

\$48,983,270

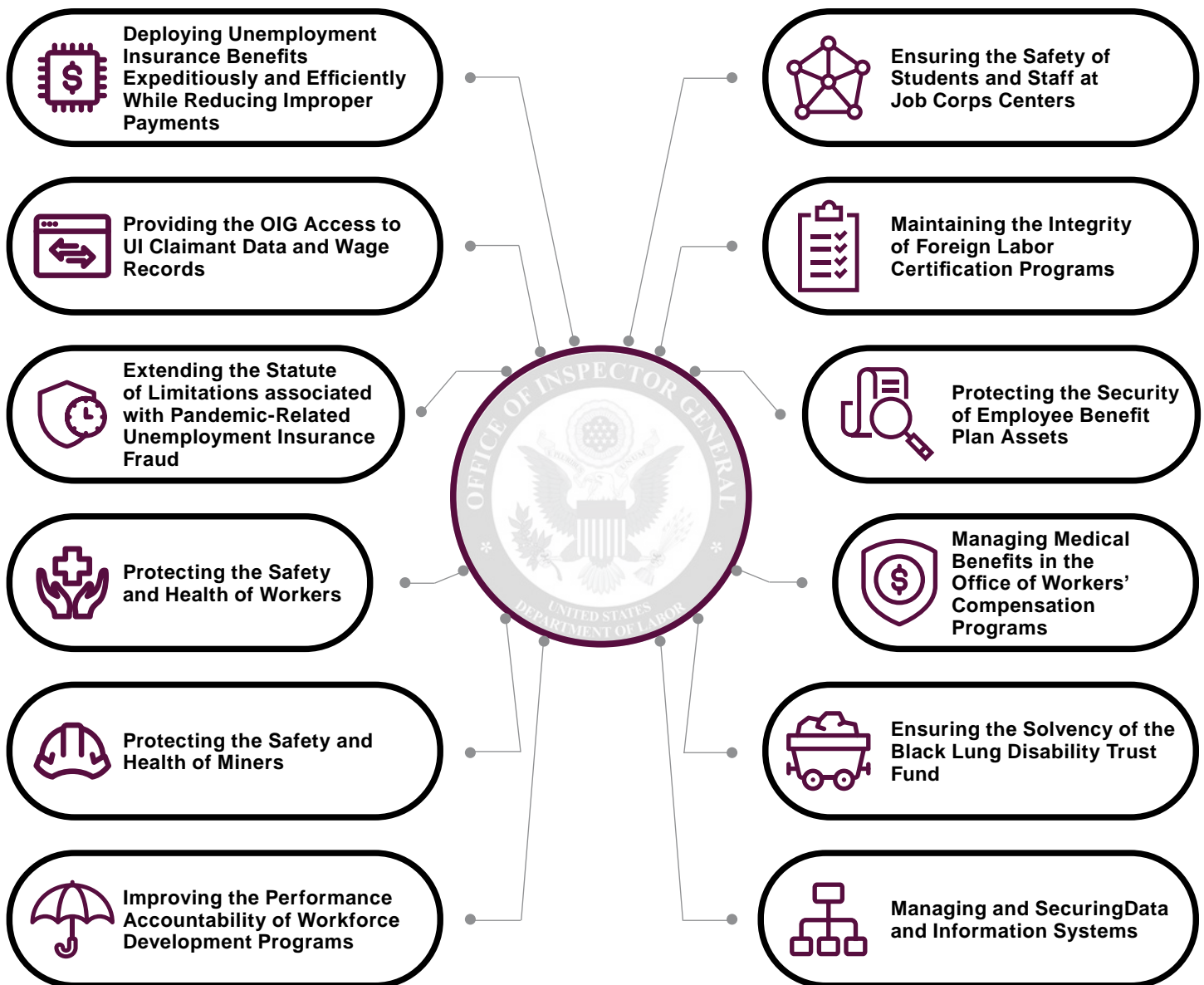


Legend:  
 Labor Racketeering  
 Program Fraud

# Significant Concerns

## Significant Concerns

The OIG has identified the following areas of significant concern that cause the Department to be at particular risk for fraud, mismanagement, waste, abuse, or other deficiencies. The identified areas of concern reflect continuing matters as well as emerging issues. Most of these issues appear in our annual Top Management and Performance Challenges report, which can be found in its entirety at [www.oig.dol.gov](http://www.oig.dol.gov).



## Significant Concerns

### Deploying Unemployment Insurance Benefits Expeditiously and Efficiently While Reducing Improper Payments

The OIG has repeatedly reported significant concerns with the Department and states<sup>1</sup> ability to deploy UI program benefits expeditiously and efficiently while ensuring integrity and adequate oversight. We remain particularly concerned about deployment of UI benefits in response to emergencies, including natural disasters and economic downturns. The OIG has reiterated these concerns regarding the economic downturn created by the COVID-19 pandemic and the hundreds of billions of dollars allocated to the UI program.

Less than a month after the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed, we published an advisory report<sup>2</sup> outlining areas of concern that the Department and the states should consider as they implemented the CARES Act UI provisions. Our identification of these areas

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<sup>1</sup> When referring to unemployment insurance, this Semiannual Report to Congress uses “state” or “State Workforce Agency” (SWA) to refer to the administrative body that administers the program within the state, district, or territory. For the 50 states, as well as the U.S. Virgin Islands, Puerto Rico, and the District of Columbia, that administrative body is a State Workforce Agency. There are, therefore, 53 State Workforce Agencies. The CARES Act also provided certain UI benefits to American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, and the Republic of Palau, provided the territory signs an agreement with the Department.

<sup>2</sup> Advisory Report, CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

represents years of work relating to DOL’s UI program, including the response to past disasters. One of these areas was state preparedness, specifically, the issues of staffing and system capabilities. Our audit work has confirmed these issues persisted into the pandemic.<sup>3</sup>

Following the start of the pandemic in the United States in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels. Prior to the pandemic, numbers of UI claims were historically low. On March 14, 2020, the Department reported 282,000 initial unemployment claims. Within 2 to 3 weeks, initial claims rose to 10 times pre-pandemic levels, far higher than state systems were designed to handle.<sup>4</sup> Within 5 months, through August 15, 2020, the Department reported more than 57 million initial claims, the largest increase since the Department began tracking UI data in 1967.

### Deploying Unemployment Insurance Benefits Expeditiously and Efficiently

Rapid deployment of CARES Act funding was critical to helping workers in need. As part of the CARES Act, Congress created three key new programs: Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC) (see Figure 1).

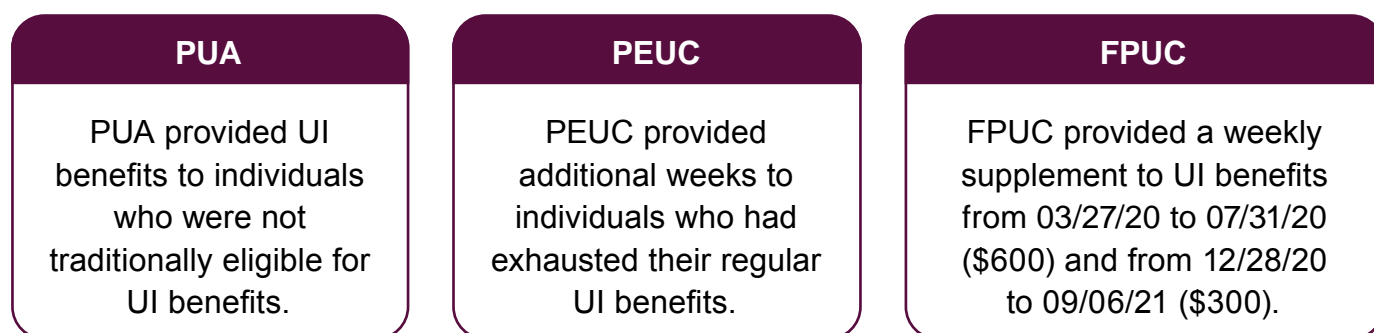
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<sup>3</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

<sup>4</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

## Significant Concerns

Figure 1: Three Key Pandemic-Related UI Programs



Source: CARES Act and related extensions

As the OIG's audit work has shown, quickly deploying funds can result in shortcomings in the effective and efficient implementation of stimulus programs. For example, the OIG had audited the Disaster Unemployment Assistance program and found the Department had not established adequate controls to ensure benefits were paid timely.<sup>5</sup> Also, states had difficulty ensuring CARES Act programs were implemented promptly. For the PUA, PEUC, and FPUC programs, we identified that, on average, it took states between 25 and 50 days for the first payment to be disbursed after passage of the CARES Act.<sup>6</sup>

Further in-depth OIG work found continuing programmatic weaknesses led to workers, unemployed through no fault of their own,

<sup>5</sup> ETA Should Do More to Assist Vulnerable States Prepare for Disaster Unemployment Assistance Program Implementation, Report No. 04-20-002-03-315 (September 29, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/04-20-002-03-315.pdf>

<sup>6</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

suffering lengthy delays in receiving benefits. We found that—from April 1, 2020, to March 31, 2021—only 5 of the 53 SWAs were able to timely pay benefits, including the FPUC supplement, to regular UI claimants.<sup>7</sup> As a result, during the year following the passage of the CARES Act, more than six million Americans waited a month or more for pandemic-related UI benefits. Furthermore, states are still challenged in paying claimants timely. For the month of January 2023, only 23 percent of states were paying regular UI claimants timely versus 75 percent before the pandemic started.<sup>8</sup>

Additionally, we identified that states may have inadvertently applied a racial or gender bias when providing benefits to claimants and did not provide adequate protections for claimants' personal data. Specifically,

<sup>7</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

<sup>8</sup> Based on OIG analysis of data on ETA's public reporting on States' UI Benefit Timeliness and Quality, available at: <https://oui.doleta.gov/unemploy/btq.asp>

## Significant Concerns

to combat imposter claims, 45 percent of states hired identity verification service contractors that used facial recognition technology. In 2019, the National Institute of Standards and Technology's (NIST)<sup>9</sup> Information Technology Laboratory reported<sup>10</sup> it found empirical evidence that the algorithms<sup>11</sup> used in current facial recognition technology have a racial and gender bias. Furthermore, 15 of 24 (63 percent) state contracts did not include privacy security measures based on recommendations by the National Strategy for Trusted Identities in Cyberspace<sup>12</sup> necessary to protect UI claimants' biometric data.

### Reducing Improper Payments Including Fraud

For over 20 years, the OIG has reported on the Department's limited ability to measure, report, and reduce improper payments in the UI program, which has experienced some of the highest improper payment rates across the federal

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<sup>9</sup> Founded in 1901, NIST is one of the nation's oldest physical sciences laboratories and a non regulatory agency. Its mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life.

<sup>10</sup> NIST, "NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software" (December 19, 2019), available at: <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>

<sup>11</sup> An algorithm, according to Cambridge Dictionary, is a set of mathematical instructions or rules that, especially if given to a computer, will help to calculate an answer to a problem.

<sup>12</sup> The National Strategy for Trusted Identities in Cyberspace is a federal government initiative launched in 2011 to encourage private sector actors to adopt measures enhancing privacy of personally identifiable information on the internet, including biometric data.

government.<sup>13</sup> The reported improper payment rate estimate for the regular UI program has been above 10 percent for 15 of the last 19 years. In the last 2 years, ETA has estimated an improper payment rate of 18.71 percent and 21.52 percent, respectively.

### WHAT IS AN IMPROPER PAYMENT?

A payment is improper if it should not have been made or was to the wrong recipient.

\*

Examples include overpayments and underpayments.

\*

A improper payment can be unintentional or intentional.

\*

Intentional improper payments are more commonly referred to as financial fraud.

Our recommendations have specifically included the need for the Department to estimate improper payments within federally funded temporary emergency programs. In August 2020, we recommended<sup>14</sup> ETA estimate the improper payment rate for pandemic-related UI programs.

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<sup>13</sup> Fraud is a type of improper payment. The Office of Management and Budget explains that, at a high level, a payment is "improper" if made in an incorrect amount or to the wrong recipient. Improper payments can result in a money loss that was either unintentional (accidental) or intentional (fraud). Office of Management and Budget, "Transmittal of Appendix C to OMB Circular A-123, Requirements for Payment Integrity Improvement," Memorandum (March 5, 2021), last accessed September 27, 2022, available at: <https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf>

<sup>14</sup> COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation under the CARES Act, Report No. 19-20-008-03-315 (August 7, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

## Significant Concerns

In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent for 2021, which ETA applied to two of the three key pandemic UI programs, PEUC and FPUC. Additionally, in December 2022, ETA reported an improper payment rate estimate of 21.52 percent, which it also applied to PEUC and FPUC.<sup>15</sup>

We previously reported that, applying the 18.71 percent to an estimated \$872.5 billion in pandemic-related UI funding, at least \$163 billion in pandemic UI benefits could have been paid improperly, with a significant portion attributable to fraud. In Congressional testimony in February 2023,<sup>16</sup> we reported updated information, with two primary changes: (1) ETA released its annual improper payment rate estimate for FY 2022 and (2) ETA has recently provided a total for pandemic

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<sup>15</sup> In FY 2022, the Department found the PUA, PEUC, and FPUC programs to be susceptible to significant improper payments. The Office of Management and Budget Memorandum M-21-19 requires the Department to produce an improper payment and unknown payment rate in the FY following the FY in which the risk assessment determination was made. In the Agency Financial Report, the Department stated FY 2022 is anticipated to be the last year reporting on these programs as they expired on September 6, 2021. ETA's reported improper payment rate estimate of 21.52 percent does not include the PUA program. However, it is the most current improper payment rate from ETA and PUA had significant control weaknesses that indicate the program will have a comparable or greater improper payment rate.

<sup>16</sup> "The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud," Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; House Committee on Ways and Means (February 8, 2023), available at: <https://www.oig.dol.gov/public/testimony/02082023.pdf>

UI spending.<sup>17</sup> While that expenditure information is likely to be updated, these changes enabled us to report on actual expenditures rather than on estimated funding.

**Applying the estimated 21.52 percent improper payment rate to the approximate \$888 billion in pandemic UI expenditures, at least \$191 billion in pandemic UI payments could have been improper payments, with a significant portion attributable to fraud.**

With those updates, more than \$888 billion in total federal and state UI benefits were paid for benefit weeks during the UI pandemic period.<sup>18</sup> Applying the estimated 21.52 percent improper payment rate to the approximate \$888 billion in pandemic UI expenditures, at least \$191 billion in pandemic UI payments could have been improper payments, with a significant portion attributable to fraud. Further, for Program Year 2021, ETA estimated a

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<sup>17</sup> According to ETA, the data provided reflects CARES Act UI program activity through January 23, 2023, with the exception of the Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week program, which is through December 31, 2022; data provided regarding the regular UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Servicemembers programs reflect the monthly totals from April 2020 through September 2021.

<sup>18</sup> With the exception of PUA, for which claims could be backdated to January 27, 2020, we define the UI pandemic period as March 27, 2020, through September 6, 2021. We also note that, according to ETA, it cannot provide final total costs of the programs because states are still processing claims that were for weeks of unemployment prior to expiration of the programs.



## Significant Concerns

fraud rate of 8.57 percent,<sup>19</sup> which indicates over \$76 billion was likely paid to fraudsters.

Based on our audit and investigative work, the improper payment rate for pandemic related UI payments was likely higher than 21.52 percent. For example, ETA's reported improper payment rate estimates have not included the PUA program. ETA stated it would report the estimated improper payment rate for PUA in 2022. However, the Office of Management and Budget (OMB) granted the Department an extension to report on PUA in FY 2023. As of March 31, 2023, the Department has not yet reported the PUA improper payment rate.

PUA's expanded coverage, for a population of claimants who were traditionally ineligible to receive UI benefits,<sup>20</sup> presented significant challenges to states. The reliance solely on claimant self-certifications without documentation substantiating the individual's prior employment or self-employment during PUA's first 9 months rendered the program extremely susceptible to improper payments, including fraudulent payments. Notably, in the first 6 months after the CARES Act passed, we found 4 states paid

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<sup>19</sup> ETA estimated the fraud rate as part of their Benefit Accuracy Measurement system reporting for the program year July 1, 2020, through June 30, 2021. The Benefit Accuracy Measurement system is designed to determine the accuracy of paid and denied claims in three major UI programs: regular State UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex Servicemembers. The fraud rate for 2022 will likely be published in October 2023.

<sup>20</sup> The new PUA program extended unemployment benefits to the self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who were unable to work as a direct result of COVID-19.

\$1 out of \$5 in PUA benefits to likely fraudsters.<sup>21</sup> Subsequent to our work identifying the fraud risks, Congress took action under the Continued Assistance for Unemployed Workers Act of 2020 to require supporting documentation to improve states' abilities to ensure proper claimant eligibility and to mitigate fraud. However, a significant amount of UI benefit money had already been paid to likely fraudsters.

PUA had control weaknesses that may have facilitated comparable or greater improper payments. For example, despite ETA providing states guidance on areas of improper payments as early as May 2020, control issues occurred in some states with PUA forms.<sup>22</sup> ETA notified one state in June 2020 that its form did not include the required questions confirming that claimants were able and available to work. However, by then, that state had paid more than \$4 billion in PUA benefits, including FPUC. Similarly, in July 2020, ETA notified another state that its PUA monetary determination form did not have a procedure in place for re-determining the claimant's weekly benefit if the claimant did not provide proof of earnings or provided insufficient proof. That state responded that the problem would be addressed by the end of August 2020. However, by the end of August, that state had paid more than \$25 billion in PUA benefits, including FPUC.

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<sup>21</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

<sup>22</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

## Significant Concerns

As the OIG has reported, the unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit. That, combined with easily attainable stolen personally identifiable information (PII) and continuing UI program weaknesses identified by the OIG over the last several years, allowed criminals to defraud the system.

Because many states were not prepared to process the extraordinary volume of new UI claims and struggled to implement the new programs, some internal controls that had been traditionally used or recommended for processing UI claims were not initially applied.

This created multiple high-reward targets where an individual could make a fraudulent claim with relatively low risk of being caught. For example, as time went on, one fraudster could have been issued several UI debit cards, with tens of thousands of dollars on each card. In fact, in an audit, we found 1 claim that was filed from a 3-bedroom house shared the same physical address as 90 other claims and used the same email address as 145 other claims.<sup>23</sup> In total, the likely fraudster(s) received \$1,569,762 in unemployment benefits. In the same audit, we found that, from March 28, 2020, to September 30, 2020, in 4 states, potentially fraudulent claims were paid more than 60 percent of the time.

The volume of UI investigative matters is unprecedented in the OIG's history. Prior to the pandemic, the OIG opened approximately 100 UI investigative matters annually. Since April 1, 2020, the OIG has opened over 200,000 investigative matters involving the UI program. That is an increase of more than 1,000 times in the volume

of our UI work. UI investigations now account for approximately 96 percent of the OIG investigative case inventory, compared to approximately 11 percent prior to the pandemic. Of the more than 200,000 investigative matters opened, approximately 157,000 are still under review.

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When the OIG identifies anti-fraud measures that may help the program, we share them with the Department and SWAs as appropriate. For example, in alert memoranda issued in February 2021,<sup>24</sup> in June 2021,<sup>25</sup> and in September 2022,<sup>26</sup> our

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<sup>24</sup> Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas, Report No. 19-21-002-03-315 (February 22, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>

<sup>25</sup> Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>

<sup>26</sup> Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>

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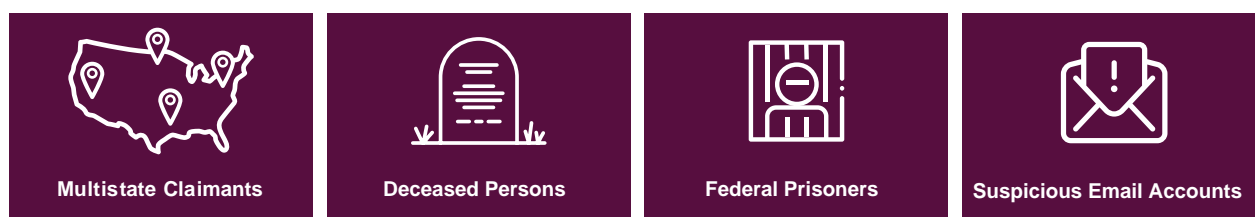
<sup>23</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

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investigators, auditors, and data scientists collaboratively identified potentially fraudulent UI benefits paid in four high risk areas, to individuals with Social Security numbers: (1) filed in multiple states, (2) of deceased persons, (3) of federal inmates, and (4) used to file for UI claims with suspicious email accounts (see Figure 2). As of September 2022, we had identified \$45.6 billion paid in potential fraud in those high-risk areas.

lieu of recovering overpayments. While the Department has provided guidance stating recovery of fraudulent payments may not be waived, we remain concerned that states may have unintentionally waived or will waive fraudulent payments. As of March 28, 2023, states reported waiving more than \$4 billion in overpayments.

**Figure 2: Four High-Risk Areas for Potential UI Fraud**



Source: OIG analysis<sup>27</sup>

We shared our methodology and underlying data with the Department for further dissemination to the SWAs, and we recommended they establish effective controls to mitigate fraud and other improper payments to ineligible claimants. We are currently examining whether states took effective measures to address the four high-risk areas.

In Spring 2023, we began to assess the effects of ETA's guidance on waivers and blanket waivers. In May 2021, ETA provided guidance to states on the waiving of recovery of overpayments when the claimant was without fault and if the repayment would be contrary to equity and good conscience as allowable by the CARES Act. This guidance also outlined limited circumstances when the states could use blanket waivers in

After the CARES Act passed, ETA worked quickly to obtain signed state agreements and ensure pandemic-related UI funds were available. Despite this and other efforts, ETA's guidance and oversight was not timely enough to prevent historic improper payments of UI benefits, including fraud. In April 2022, ETA stated<sup>28</sup> that a "swift rollout of a new government benefit program...would be 30 to 48 months." The OIG agrees with ETA that "states' ability to provide benefit payments within [1 to 2] months for a new, temporary UI program is a very impressive achievement given the extensive, complex requirements and activities that were necessary for implementation."

However, we are concerned that, given the nature of emergency situations, states would be unlikely

<sup>27</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

<sup>28</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

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to have a lengthy rollout period for emergency programs. ETA and states must include risk planning that would identify measures to facilitate the creation of new programs similar to the ones created in response to the pandemic, including steps to ensure eligibility procedures and Benefit Payment Control operations continue to function.

### Providing the OIG Access to UI Claimant Data and Wage Records

The barriers to the OIG's ongoing, timely, and complete access to UI claimant data and wage records from SWAs is a significant concern. This deficiency directly and adversely impacts the OIG's ability to provide independent oversight and combat fraud, waste, and abuse to help DOL reduce improper payments in its programs, including regular and temporary UI programs. The power and use of data and predictive analytics enables the OIG to continuously monitor DOL programs and operations to detect and investigate fraud. Continuous monitoring serves as a deterrent to fraud, allows the OIG to promptly discover areas of weakness, and enables DOL management to timely correct problems. The OIG's ability to proactively detect UI fraud through our audit and investigative activities continues to be significantly hampered by the OIG's lack of direct access to UI claimant data and wage records.

Prior to and during most of the pandemic period, DOL required SWAs to disclose UI data only for specific fraud investigations. DOL asserted it lacked the authority to require SWAs to provide UI data to the OIG for audits and investigations. As a result, the OIG was forced to take the unprecedented step of using Inspector General subpoenas to obtain this critical data. DOL's interpretation of its regulations hindered the OIG's ongoing, timely, and complete

access to state UI claims data to assist in detecting and deterring large-scale fraud.

DOL continues to interpret regulations at 20 Code of Federal Regulations Part 603 as prohibiting ETA from requiring SWAs to provide UI data to the OIG for all audit purposes and for investigative purposes, other than those involving specific instances of suspected fraud. This interpretation and subsequent guidance to SWAs contradict the Inspector General Act of 1978, as amended, which authorizes mandatory Inspector General access to DOL grantee information related to DOL programs, including SWAs' UI data. In our June 2021 alert memorandum,<sup>29</sup> we recommended ETA amend its regulations to reinforce that SWAs' UI information must be provided to the OIG for all engagements authorized under the Inspector General Act of 1978, as amended, including audits, evaluations, and investigations.

To date, ETA has only implemented temporary solutions that are not sufficient to resolve the OIG's recommendation or concerns. ETA announced its intent to amend its regulations to allow the OIG's ongoing access by February 2025. ETA has also required sharing of state UI data as a condition of the fraud prevention grants offered under the American Rescue Plan Act of 2021 (ARPA), which will provide such access through 2025. However, all states would need to receive the grants to provide the necessary access. ETA stated it was able to require SWAs to provide UI data to the OIG due to temporary authority created by the CARES Act and

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<sup>29</sup> Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of the Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>



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subsequent pandemic related legislation. Because of DOL's interpretation of the CARES Act, ETA's guidance has limited OIG access to the pandemic period and expiration of the fraud prevention grants, which is contrary to the Inspector General Act of 1978, as amended.

Unless DOL implements a permanent solution ensuring the OIG's complete and timely access to UI program data and information by the end of 2025, the Department's interpretation of its regulations will renew impediments to the OIG's access experienced prior to and during the pandemic and may necessitate additional subpoenas.

While the OIG and ETA agree that changing regulations requires notice and comment rulemaking, an immediate and legally sound interim solution is available to ETA. In the alert memorandum issued September 21, 2022,<sup>30</sup> the OIG highlighted DOL's authority to amend its interpretation of its regulations without changing the regulations themselves. ETA could immediately amend its interpretation of its regulations to be consistent with the Inspector General Act of 1978, as amended. Specifically, ETA can issue guidance to inform SWAs that they must timely provide UI data without any constraints to the OIG for audits and investigations consistent with the Inspector General Act of 1978, as amended. The historic levels of improper payments that the OIG has identified, including potential fraud, support the conclusion that the OIG's continued access to state UI data is imperative.

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<sup>30</sup> Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>



In support of the OIG's oversight activities, the OIG needs access to UI claimant data and wage records from SWAs to verify claimants' eligibility for UI benefits, including both initial eligibility (and amounts) and continuing eligibility. Timely access to these records will facilitate the OIG's efforts to identify claimants who are part of large-scale fraud schemes or are receiving benefits improperly due to systemic program weaknesses. Further, timely access to UI data will allow the OIG to use our data analytics program to identify and investigate complex identity theft and multistate fraud schemes as we have successfully done during the pandemic. The OIG could also use those records to assess program outcomes for UI reemployment programs, as well as other training programs, such as YouthBuild and Job Corps, where employment and wage increases are important factors in determining a program's success.

Congress should consider legislative action to expressly authorize DOL and the OIG to have ongoing, timely, and complete access to UI claimant data and wage records for our oversight responsibilities. Ongoing, timely, and complete access to SWA UI claimant data and wage records systems would further enable the OIG to quickly identify large-scale fraud and expand its current efforts to share emerging fraud trends with ETA and states to strengthen the UI program and deter fraud.

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### Extending the Statute of Limitations associated with Pandemic Related Unemployment Insurance Fraud

We are concerned that, unless Congress acts to extend the statute of limitations for fraud associated with pandemic-related UI programs, many groups and individuals that have defrauded the UI program may escape justice. As the primary federal law enforcement agency responsible for providing oversight of the UI program, the OIG has vigorously pursued pandemic-related UI fraud. In fact, in September 2022, the OIG announced<sup>31</sup> that OIG investigations have resulted in more than 1,000 individuals being charged with crimes involving UI fraud since March 2020. Since then, that number has risen to more than 1,300 individuals charged.<sup>32</sup>

Even with the OIG's tireless efforts, the current statute of limitations associated with UI fraud means federal law enforcement may still fall short in fully investigating and prosecuting the most egregious cases of UI fraud, especially given the volume and complexity of UI fraud matters we are tasked to investigate. Currently, the statute of limitations for many of these cases will expire in 2025 as the statutes most often used to prosecute UI fraud have 5-year limitations.

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<sup>31</sup> "Labor Watchdog's Pandemic Work Results in More Than 1,000 Individuals Charged with UI Fraud and \$45.6 Billion Identified in Potentially Fraudulent Pandemic UI Benefits," press release (September 22, 2022), available at: <https://www.oig.dol.gov/public/Press%20Releases/DOL-OIG%20Pandemic%20Work%20Results%20in%20More%20Than%201000%20Individuals%20Charged%20with%20UI%20Fraud.pdf>

<sup>32</sup> For more details about OIG investigations, please visit: [https://www.oig.dol.gov/OIG\\_Pandemic\\_Response\\_Portal.htm](https://www.oig.dol.gov/OIG_Pandemic_Response_Portal.htm).

As previously stated, during the pandemic, the volume of the OIG's UI investigative matters increased more than 1,000 times. Prior to the pandemic, the OIG opened approximately 100 UI fraud investigative matters each year. Between March 1, 2020, and August 1, 2022, the OIG opened more than 200,000 investigative matters involving UI fraud. We continue to receive, on average, 200 to 300 new pandemic-related UI fraud complaints each week from the National Center for Disaster Fraud. As a direct result of the exponential increase in pandemic-related UI fraud referrals, OIG investigators are now carrying the largest case inventory in the OIG's history. We are currently dedicating the majority of our investigative resources to addressing pandemic related UI fraud matters.

Pandemic-related UI fraud referrals that we receive often include complex schemes involving criminal enterprises and bad actors who use sophisticated techniques to maintain their anonymity. For instance, in one pandemic-related UI fraud investigation into the theft of over \$4 million in UI benefits from a SWA, conspirators orchestrated a scheme to file UI claims using stolen identities, which were often associated with elderly citizens.<sup>33</sup> The conspirators then opened bank accounts using the stolen identities for the sole purpose of having fraudulent UI proceeds deposited into them. They withdrew the fraudulent proceeds and purchased money orders made out to themselves and to an online vehicle auction company. The conspirators then laundered the UI funds by using the money

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<sup>33</sup> Department of Justice, U.S. Attorney's Office, Northern District of Alabama, "Georgia Resident Pleads Guilty to COVID-19 Unemployment Fraud Targeting Several States," press release (June 8, 2022), available at: <https://www.justice.gov/usao-ndal/pr/georgia-resident-pleads-guilty-covid-19-unemployment-fraud-targeting-several-states>



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orders to purchase salvaged automobiles in the United States and ship them to Nigeria. They also facilitated the transfer of conspiracy proceeds to overseas bank accounts in Nigeria. This complex fraud investigation spanned both domestic and foreign jurisdictions. The defendants have been convicted of conspiracy to commit wire fraud.

**This complex fraud investigation spanned both domestic and foreign jurisdictions. The defendants have been convicted of conspiracy to commit wire fraud.**

Criminal investigations like this one require significant resources and time. Additional resources from Congress allowed the OIG to hire more criminal investigators and significantly expand the number of staff reviewing UI fraud matters. We also leveraged additional federal resources by partnering with the U.S. Department of Justice (DOJ) and other federal law enforcement agencies on the National Unemployment Insurance Task Force, the COVID-19 Fraud Enforcement Task Force, and the COVID-19 Fraud Enforcement Strike Force teams to investigate and prosecute UI fraud.

While these investigative resources helped us address the incredible volume of UI fraud matters, the process of collecting and cleaning the SWA data required a significant amount of time. Also, unfortunately, the OIG is in the process of reducing staffing to pre pandemic levels due to limited resources and the near exhaustion of supplemental funding. We leveraged the UI data we were able to collect to identify those matters that posed the greatest risk to the UI program; however, to most effectively and efficiently investigate these matters, we need additional time, data, and resources. The OIG anticipates identifying and investigating pandemic-related UI fraud until the statute of

limitations expires. Absent congressional action, the statute of limitations will begin to expire in early 2025.

In August 2022, an extension of the statute of limitations was implemented for crimes involving the U.S. Small Business Administration's Paycheck Protection Program and Economic Injury Disaster Loan program.<sup>34</sup> Congress should likewise consider extending the statute of limitations for existing laws when pandemic-related UI programs are defrauded. The expansion of the statute of limitations would provide investigators and prosecutors time to pursue and hold accountable those who defrauded the UI program and victimized the American people during the pandemic.

Further, for similar reasons, Congress could consider extending the federal statute of limitations for states to pursue administrative recoveries in cases of proven overpayments including fraud and with appropriate due process.

### Protecting the Safety and Health of Workers

OSHA is responsible for the safety and health of approximately 130 million workers employed at more than 8 million worksites. OSHA must ensure employers are providing the level of protection required under relevant laws and policies. The OIG remains concerned about OSHA's ability to target its compliance activities to areas where it can have the greatest impact.

OSHA carries out its compliance responsibilities through a combination of self-initiated inspections

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<sup>34</sup> The White House, "Bills Signed: H.R. 7334 and H.R. 7352," (August 5, 2022), available at: <https://www.whitehouse.gov/briefing-room/legislation/2022/08/05/bills-signed-h-r-7334-and-h-r-7352/>

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and those resulting from complaints and referrals. In FY 2022, OSHA conducted 31,856 inspections, including 16,718 unprogrammed inspections. Unprogrammed inspections result from employee complaints, injuries/fatalities, and referrals. OSHA must target the most egregious or persistent violators to protect the most vulnerable worker populations. OSHA has since increased its number of inspectors—from 750 in 2021 to 931 as of March 31, 2023. However, OSHA continues to be challenged with reaching the number of worksites for which it is responsible.

In a recent audit,<sup>35</sup> we found OSHA did not consistently ensure complaints and referrals were adequately addressed nor did it regularly enforce hazard abatement timelines. Specifically, we found OSHA did not consistently involve the complainant and/or witnesses in the investigation or inspection processes. It has no policy requiring Compliance Safety and Health Officers, those responsible for performing inspections and investigations, to interview or otherwise involve the complainant after the complaint is filed.

However, that person may have key insights to ensure alleged hazards are being addressed. OSHA interviewed the complainant in 50 percent of sampled complaints. In all sampled cases where OSHA interviewed the complainant and/or witnesses, each person was only interviewed once. Additionally, OSHA did not consistently follow procedures in its Field Operations Manual involving documentation of decision points, indicating a possible inadequacy in its inspection processes. Finally, OSHA did not regularly ensure safety and

health violations from complaints and referrals were corrected in a timely manner.

Additionally, we found<sup>36</sup> OSHA's enforcement activities did not sufficiently protect workers from pandemic health hazards. In an audit of OSHA's enforcement activities during the pandemic, we found OSHA did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent of sampled fatality inspections. An employer reporting a fatality late, not evaluating work relatedness of exposure, or failing to report a fatality altogether impacts OSHA's ability to provide prompt assistance.

Further, OSHA lacks complete information on COVID-19 infection rates at worksites. OSHA only requires employers to report a work-related fatality, inpatient hospitalization, amputation, or loss of an eye. It is up to employers to determine if an injury or illness is work-related, which is generally far simpler in an amputation case than in the case of an airborne illness. Finally, OSHA closed inspections without ensuring it received and reviewed all items requested from employers to demonstrate alleged COVID-19 health hazards had been mitigated. Due to the lack of citations, incomplete information on infection rates at worksites, and insufficient evidence of hazard mitigation, there is a heightened risk that workers suffered unnecessary exposure to the virus.

To protect workers from pandemic health hazards, OSHA's enforcement activities can be improved (see Figure 3).

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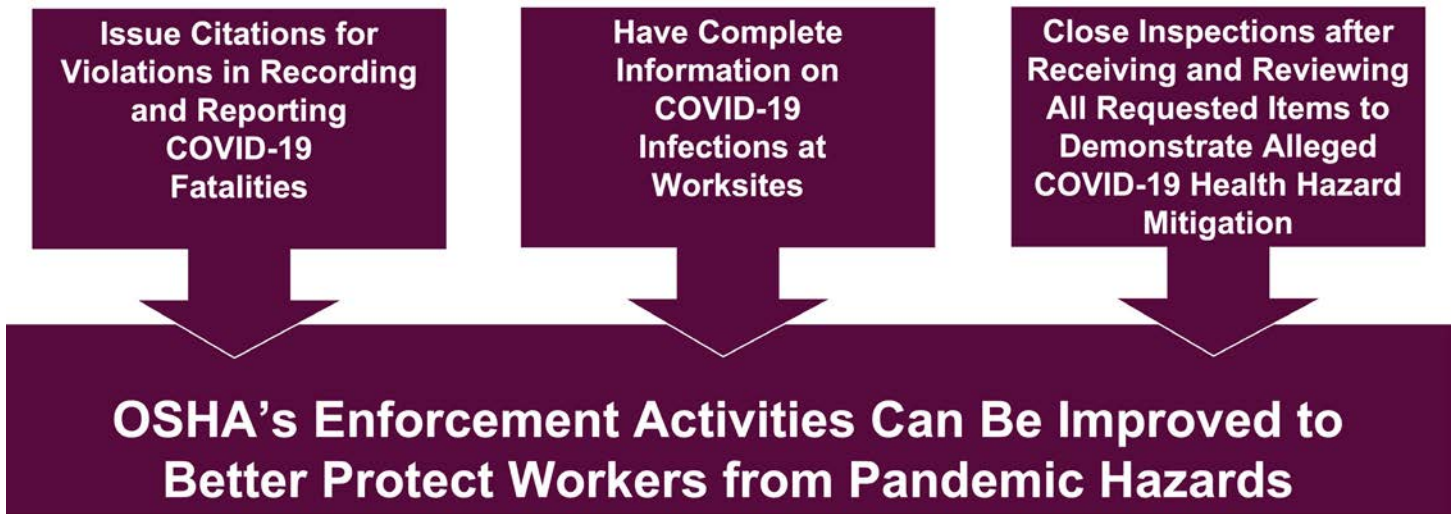
<sup>35</sup> OSHA Needs to Better Address Complaints and Referrals for Increased Worker Safety, Report No. 02-23-01-10-105 (March 6, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/02-23-001-10-105.pdf>

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<sup>36</sup> COVID-19: OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards, Report No. 19-23-001-10-105 (October 31, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2023/19-23-001-10-105.pdf>

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Figure 3: OSHA's Enforcement Activities Can Be Improved



Source: OIG analysis

## Protecting the Safety and Health of Miners

The Mine Safety and Health Administration's (MSHA) ability to decrease the number of powered haulage accidents in mines and develop strategies to protect miners from lung disease are concerns for the OIG.

While powered haulage fatalities decreased in 2022, from 2018 through 2022, powered haulage accidents remained the leading cause of mining fatalities (see Figure 4).

On September 9, 2021, MSHA released a proposed rule requiring mines to have written safety programs for mobile and powered haulage equipment. In addition, in November 2021, MSHA launched an enforcement initiative focused on powered haulage by issuing guidance on preventing accidents and meeting

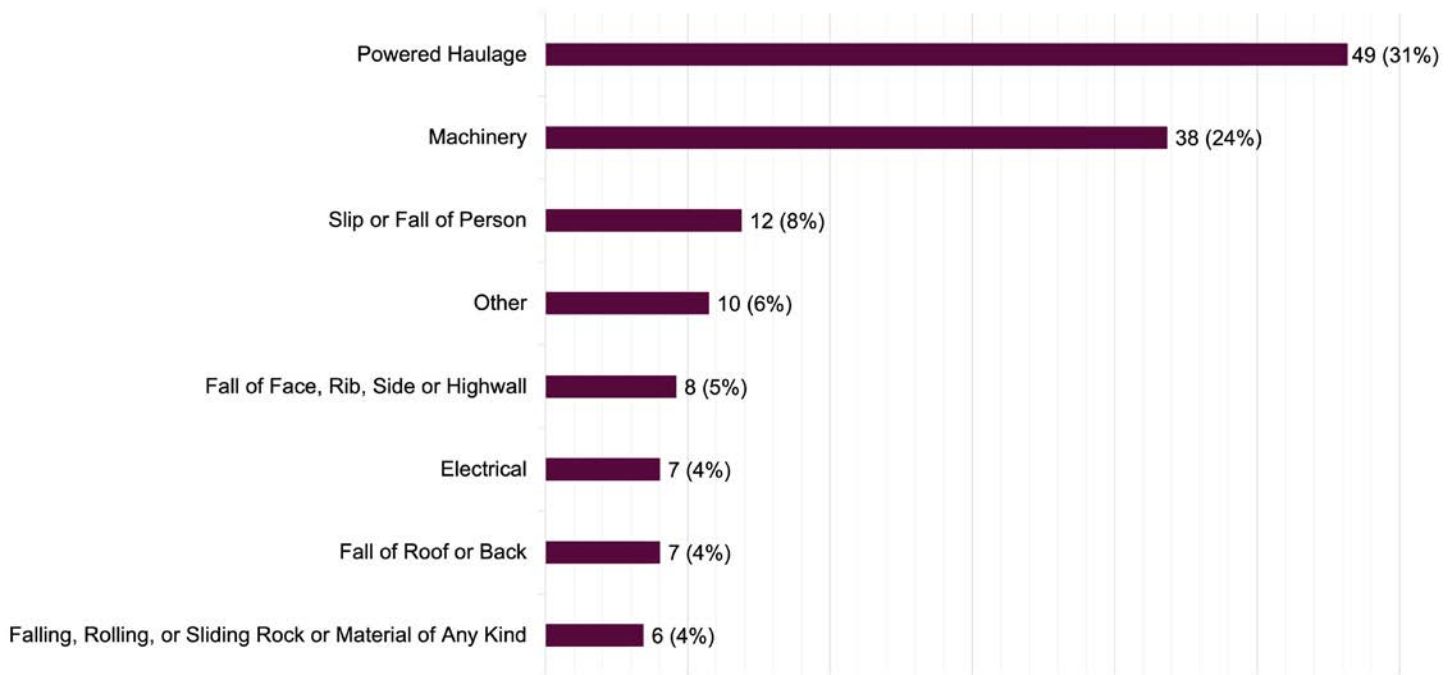
with mine personnel to emphasize best safety practices and training. MSHA also issued safety guidance intended to help prevent accidents associated with working with, on, or near powered haulage equipment. Likewise, within the past year, MSHA implemented its Enhanced Enforcement Program to help improve safety and health in the mining industry. The OIG will continue to monitor MSHA's efforts to decrease powered haulage accidents.

MSHA also needs to develop strategies to address lung disease in coal mining states, particularly by updating regulations regarding silica content in respirable dust.<sup>37</sup> Respirable crystalline silica can

<sup>37</sup> MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica, Report No. 05-21-001-06-001 (November 12, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-06-001.pdf>

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Figure 4: Number and Percentage of Mining Fatalities by Class, 2018-2022



Source: MSHA's Accident Injuries public dataset

cause deadly and incurable chronic conditions, such as black lung disease. MSHA's allowable limit for silica has remained unchanged for more than 50 years, even as the acceptable limit for silica exposure for workers other than miners has been significantly decreased by OSHA regulations.

MSHA has transmitted a proposed rule addressing miners' exposure to silica to OMB for interagency review. While we recognize the progress, the OIG remains concerned about MSHA's inability to publish the proposed rule as it has started and restarted its rulemaking efforts for silica regulations at least six times since 1996.

In June 2022, MSHA announced a Silica Enforcement Initiative to better protect miners from health hazards related to repeated overexposures to respirable crystalline silica. For coal miners who have already developed

pneumoconiosis,<sup>38</sup> MSHA has implemented an outreach campaign to increase their awareness of their Part 90 right to exercise the option to work in a less dusty area of the mine and suffer no loss in pay. However, the OIG continues to monitor MSHA's progress toward adopting a rule for a lower silica exposure limit.

### Improving the Performance Accountability of Workforce Development Programs

The OIG has concerns about the Department's ability to ensure its investments in workforce development programs are successful in advancing participants'

<sup>38</sup> Pneumoconioses are a group of lung diseases, such as black lung and silicosis, caused by the lungs' reaction to inhaling certain dusts. The main cause of the pneumoconioses is workplace exposure.



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skills and placing them in suitable employment. The pandemic highlighted the importance of the Department's workforce development programs assisting job seekers and employers in finding and filling available jobs and assisting workers in developing the right skills to fill new job openings. The Department's ability to obtain accurate and reliable data to measure, assess, and make decisions regarding the performance of grant recipients, contractors, and states in meeting the programs' goals is critical.

The Department needs to ensure its investments in credential attainment align with local employers' needs and are having the desired impact on participants' ability to obtain or advance in a job. In a 2018 audit<sup>39</sup> that followed up on the employment status of a sample of Job Corps students 5 years after they left the program, we found that Job Corps faced challenges in demonstrating the extent to which its training programs helped those participants obtain meaningful jobs appropriate to their training.

In March 2018, ETA announced the National Health Emergency Grant program to help communities address the economic and workforce-related impacts of the opioid crisis. Research suggests that opioid dependency has been a leading cause of workforce exits for workers ages 25 to 54. To date, ETA has approved up to \$143 million in grants to address the opioid crisis. It is vital that the Department monitor the performance of the discretionary grants it has awarded for the delivery of services to employers and workers affected by the opioid crisis.

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<sup>39</sup> Job Corps Could Not Demonstrate Beneficial Job Training Outcomes, Report No. 04-18-001-03-370 (March 30, 2018), available at: <https://www.oig.dol.gov/public/reports/oa/2018/04-18-001-03-370.pdf>

In 2022, ETA awarded a total of \$171 million in Apprenticeship Building America grant funds to 39 grantees. This grant program advances the Department's efforts to expand and modernize Registered Apprenticeship by increasing the number of programs and apprentices, diversifying the industries that use Registered Apprenticeship and improving the access to and performance of Registered Apprenticeship Programs for underrepresented and underserved communities.



A 2021 audit<sup>40</sup> found ETA did not sufficiently plan and execute the American Apprenticeship Initiative grant program. Despite progress in achieving some of the program's goals, the report found systemic weaknesses throughout the grant program, in the execution of the grants as well as in the planning and award processes. We are concerned that these issues and challenges continue to exist.

As expressed in a March 2022 advisory report,<sup>41</sup> the OIG continues to be concerned about three

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<sup>40</sup> ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program, Report No. 05-21-004-03-375 (September 30, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-004-03-375.pdf>

<sup>41</sup> Advisory Report: ETA's Management of Workforce Development Grants: Key Concerns, Report No. 09-22-001-03-001 (March 31, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/09-22-001-03-001.pdf>

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areas in particular where our body of work has identified weaknesses: awarding grants, reviewing grant recipients' use of funds, and measuring grant recipient performance. While ETA has taken action to address many prior years' findings and recommendations related to eligibility, effectiveness, and compliance and monitoring, it must also proactively monitor key areas and continue to assess for these weaknesses to ensure they do not reoccur.

### Ensuring the Safety of Students and Staff at Job Corps Centers

Ensuring the safety and health of students and staff at Job Corps centers continues to be a concern due to ongoing issues with on campus violence. Job Corps centers are mostly residential, with students living on campus.

Preventing on campus violence and other potentially criminal behavior remains a challenge for Job Corps centers. OIG audits from 2015<sup>42</sup> and 2017<sup>43</sup> found that some Job Corps centers failed to report and investigate serious misconduct, such as drug abuse and assaults. The audits also determined that some Job Corps centers downgraded incidents of violence to lesser infractions, creating an unsafe environment for students and staff. The follow-up work we

completed in December 2017<sup>44</sup> and our review of Job Corps' corrective actions showed Job Corps has taken steps to improve center safety and security by establishing stronger internal controls and security measures, including the installation of security cameras, perimeter fencing, and better lighting at centers. However, student misconduct concerns continue.

**The OIG continues to monitor various safety initiatives and actions taken by Job Corps to keep students and staff safe.**

A March 2021 OIG audit report<sup>45</sup> showed the current process does not provide Job Corps centers the appropriate tools and resources to properly evaluate applicants for substance abuse and mental health issues as they enter the program and does not ensure centers have the necessary resources to mitigate them. While ETA stated it increased nursing and mental health consultants' hours at every center to help address these concerns, it determined pre-enrollment behavioral assessments, of the type the OIG identified, are not feasible legally or programmatically and pre-enrollment academic readiness screening of prospective students does not align with the program's eligibility criteria, nondiscrimination obligations, and overall purpose to serve a diverse collection of youth. The OIG continues to monitor various safety initiatives and actions taken by Job Corps to keep students and staff safe.

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<sup>42</sup> Job Corps Needs to Improve Enforcement and Oversight of Student Disciplinary Policies to Better Protect Students and Staff at Centers, Report No. 26-15-001-03-370 (February 27, 2015), available at: <https://www.oig.dol.gov/public/reports/oa/2015/26-15-001-03-370.pdf>

<sup>43</sup> Review of Job Corps Center Safety and Security, Report No. 26-17-001-03-370 (March 31, 2017), available at: <https://www.oig.dol.gov/public/reports/oa/2017/26-17-001-03-370.pdf>

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<sup>44</sup> Job Corps Took Action to Mitigate Violence, Drugs, and Other Student Misconduct at Centers, But More Needs to Be Done, Report No. 26-18-001-03-370 (December 29, 2017), available at: <https://www.oig.dol.gov/public/reports/oa/2018/26-18-003-03-370.pdf>

<sup>45</sup> Job Corps Should Improve Its Pre-Admission Evaluation Process, Report No. 05-21-001-03-370 (March 25, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/05-21-001-03-370.pdf>



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### Maintaining the Integrity of Foreign Labor Certification Programs

The DOL foreign labor certification (FLC) programs are intended to permit U.S. employers to hire foreign workers to meet their workforce needs while protecting U.S. workers' jobs, wages, and working conditions. DOL's administration of FLC programs under current laws has been a concern for the OIG for decades. Our work has shown these visa programs, in particular the H-1B program for workers in specialty occupations, to be susceptible to significant fraud and abuse from perpetrators, including immigration agents, attorneys, labor brokers, employers, and organized criminal enterprises. Over the last decade, the OIG, along with federal partners, has conducted more than 194 criminal investigations related to fraud in FLC programs. Of particular concern, OIG investigations have uncovered criminal misuse of FLC programs to engage in human trafficking—with victims being exploited for economic gain.

In 2003, the OIG issued a white paper<sup>46</sup> outlining vulnerabilities that existed in four FLC programs, permanent employment certification program (PERM), H-1B, H-2A, and H-2B. In 2020, we issued a similar report<sup>47</sup> that found rulemaking since 2003 had revamped the PERM, H-2A, and H-2B visa programs and addressed some of the vulnerabilities cited in audits and investigations by the OIG and the Government Accountability Office (GAO). Those

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<sup>46</sup> Overview and Assessment of Vulnerabilities in the Department of Labor's Alien Labor Certification Programs, Report No. 06-03-007-03-321 (September 30, 2003), available at: <https://www.oig.dol.gov/public/reports/oa/2003/06-03-007-03-321.pdf>

<sup>47</sup> Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs, Report No. 06-21-001-03-321 (November 13, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2021/06-21-001-03-321.pdf>

same rules created challenges regarding DOL's responsibilities. Additionally, DOL continues to have limited authority over the H-1B and PERM programs, which challenges the goal of protecting the welfare of the nation's workforce.

The statute limits DOL's ability to deny H-1B applications and to investigate potential violations. Specifically, DOL may only deny incomplete and obviously inaccurate H-1B applications and has only limited authority to conduct H-1B investigations in the absence of a complaint. DOL recently established a process for information-sharing between U.S. Citizenship and Immigration Services and the Wage and Hour Division related to Secretary-initiated H-1B investigations. The PERM program itself is persistently vulnerable to employers not complying with its qualifying criteria. Therefore, both the PERM and H-1B programs remain prone to fraud.

With various new DOL rules going into effect since 2003, there have been opportunities for the PERM, H-2A, and H-2B visa programs to change. For example, these new rules implemented employer attestation programs, which allow employers to agree to the conditions of employment without providing supporting documentation to validate their agreements. However, DOL has identified instances in which employers are not complying with the conditions of employment, thereby reinforcing how susceptible these programs are to fraud.

Also, DOL has established a risk-based process to determine which H-2A and H-2B applications to audit. The selection process identifies appropriate risk factors based on adjudication experience and available H-2A and H-2B application processing data. DOL implemented the process and started the audits at the end of March 2021.

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Because the process is still early in its implementation, it is difficult for ETA to determine whether the applications audited were those most likely to result in violations eligible for employer debarment.

**FLC vulnerabilities have also been exploited to facilitate labor trafficking, a subset of human trafficking.**

FLC vulnerabilities have also been exploited to facilitate labor trafficking, a subset of human trafficking. For example, in a recent OIG investigation, four individuals were sentenced as part of a federal racketeering conspiracy, which victimized Mexican agricultural workers admitted to the United States under the H-2A temporary visa program. The investigation revealed the conspirators committed racketeering offenses, including subjecting H-2A workers to forced labor, harboring and concealing workers, visa fraud, and fraud in foreign labor contracting. The conspirators used coercive means to obtain thousands of hours of physically demanding agricultural labor from the victimized H-2A workers, all for lesser pay. The coercive means used included confiscating the workers' passports; subjecting the workers to crowded, unsanitary, and degrading living conditions; isolating the workers and limiting their ability to interact with anyone other than employees; and subjecting workers to debt manipulation.

Without statutory authority to ensure program integrity, the Department generally cannot verify employers' attestations to the H-1B certifications unless a complaint is filed or the Department utilizes a Secretary-initiated investigation. As foreign workers are generally reluctant to file complaints for fear of retaliation and losing their jobs, the Department's process is unlikely to result in verification action being taken.

### Protecting the Security of Employee Benefit Plan Assets

The OIG remains concerned about the Employee Benefits Security Administration's (EBSA) ability to protect the integrity of pension, health, and other benefit plans of about 152 million workers, retirees, and their families under the Employee Retirement Income Security Act of 1974. In particular, the OIG is concerned about the statutory limitations on EBSA's oversight authority and inadequate resources to conduct compliance and enforcement. A decades-long challenge to EBSA's compliance program, the Employee Retirement Income Security Act provisions allow billions of dollars in pension assets to escape full audit scrutiny. In 2013, we reported<sup>48</sup> that as much as \$3 trillion in pension assets, including an estimated \$800 billion in hard-to-value alternative investments, held in otherwise regulated entities such as banks, received limited-scope audits that provided weak assurance to participants regarding the financial health of their plans.

EBSA needs to focus its limited available resources on investigations that are most likely to result in the prevention, detection, and correction of Employee Retirement Income Security Act violations, particularly given the number of benefit plans EBSA oversees relative to the number of investigators it employs. Finally, EBSA lacks the authority under the Federal Employees' Retirement System Act to effectively oversee hundreds of billions in federal employee Thrift

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<sup>48</sup> EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments, Report No. 09-13-001-12-121 (September 30, 2013), available at: <https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf>

## Significant Concerns

Savings Plan assets.<sup>49</sup> The Federal Employees' Retirement System Act requires EBSA to conduct regular compliance audits to determine whether the Federal Retirement Thrift Investment Board, an independent agency, is fulfilling its fiduciary duties and properly safeguarding Thrift Savings Plan participants' assets.

However, EBSA has no legal authority to compel the Federal Retirement Thrift Investment Board to implement its recommendations, which includes enforcing its recommendations to improve the Thrift Savings Plan's cybersecurity posture. As a significant portion of the Thrift Savings Plan's infrastructure was recently transferred to an outside third-party vendor, we are concerned about the threat cybersecurity breaches pose to the Thrift Savings Plan. More generally, identifying and mitigating cyber threats requires a high degree of technical expertise. Cyber threats potentially place trillions of dollars in other Employee Retirement Income Security Act-covered retirement plan assets at risk.

### Managing Medical Benefits in the Office of Workers' Compensation Programs

The OIG has concerns about OWCP's ability to effectively manage the use and cost of pharmaceuticals in the Federal Employees' Compensation Act (FECA) program and about rising home health care costs in the Energy Employees Occupational Illness Compensation Program Act (Energy) program. The Department needs to ensure the medical benefits it provides to FECA claimants and energy workers are safe, effective, medically necessary, and cost effective.

<sup>49</sup> The total value of Thrift Savings Plan assets fluctuates over time and is affected by market volatility.



Our prior audit work regarding the FECA program has consistently identified serious internal control weaknesses related to OWCP's management of pharmaceuticals. In our March 2023 report,<sup>50</sup> we found OWCP did not effectively manage pharmaceutical spending in the FECA program from FY 2015 through FY 2020. Specifically, OWCP did not pay the best available prices for prescription drugs and we identified up to \$321 million in excess spending during the audit period. In addition, OWCP did not effectively monitor pharmaceutical policy changes to ensure implementation, resulting in claimants receiving thousands of inappropriate prescriptions and potentially lethal drugs, including 1,330 prescriptions for fast-acting fentanyl after issuing a policy that restricted its use.

We also found OWCP failed to timely identify and address emerging issues and did not perform

<sup>50</sup> OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program, Report No. 03-23-001-04-431 (March 31, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf>

## Significant Concerns

sufficient oversight of prescription drugs that are highly scrutinized and rarely covered in workers' compensation programs. As a result, OWCP spent hundreds of millions of dollars on drugs that may not have been necessary or appropriate for FECA claimants. To strengthen its management of FECA's pharmaceutical program, OWCP needs to implement processes that ensure competitive prices for prescription drugs (see Figure 5), improve its monitoring of pharmaceutical policy changes, and allow the agency to identify emerging issues before they become critical problems.

In March 2021,<sup>51</sup> consistent with our prior audit recommendations, OWCP implemented a pharmacy benefit manager responsible for FECA pharmaceutical transactions, including pricing for prescription drugs. In addition, OWCP is in the process of expanding pharmacy benefit manager coverage to the Energy and Black Lung Benefits programs.

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<sup>51</sup> Pharmacy Benefit Managers are third-party administrators of prescription drug programs, primarily responsible for: developing and maintaining formularies, which include an approved listing of prescriptions; negotiating discounts and rebates with drug manufacturers; and processing and paying prescription drug claims.

**Figure 5: Tools to Ensure Competitive Prices for Prescription Drugs**



Source: OIG graphic representation of Harper, Rains, Knight & Company, P.A. analysis



## Significant Concerns

While using a pharmacy benefit manager may improve OWCP's management of pharmaceuticals, it does not relieve OWCP from its management responsibilities. OWCP needs to provide adequate oversight over the pharmacy benefit manager to ensure the pharmaceutical benefits it provides are safe, effective, medically necessary, and economical.

In the Energy program, with an aging claimant population and an increased demand for home health care services, there is a risk of providers exploiting these benefits through unethical practices. Since 2010, home and residential health care costs paid by the Energy program have grown from almost \$100 million to approximately \$860 million, representing approximately 74 percent of total medical benefits paid by the program in FY 2022. OWCP needs to continue its efforts to analyze home health care billing for abusive practices and to identify and refer allegations involving potential fraud or abuse to the OIG for further investigation.

### Ensuring the Solvency of the Black Lung Disability Trust Fund

Miners and their dependent survivors receive lifetime benefits when awarded under the Black Lung Benefits Act. Mine operators pay these benefits when possible, and the Black Lung Disability Trust Fund (Trust Fund) pays the benefits when a miner's former employer does not or cannot assume liability. The OIG's primary concern is that the current annual income of the Trust Fund (primarily from an excise tax on coal) is not sufficient to cover annual benefit obligations to meet administrative costs and to service past debt.

The Trust Fund expenditures have consistently exceeded revenue, and the Trust Fund has essentially borrowed with interest from the U.S.

Department of the Treasury's general fund almost every year since 1979. According to DOL's FY 2022 Agency Financial Report, the Trust Fund had to borrow approximately \$2.56 billion to cover its expenditures, which included debt and interest payments. As of September 30, 2022, the Trust Fund was carrying close to a \$6.26 billion deficit balance, which is projected to grow to \$10.11 billion (in constant dollars) by September 30, 2047.



The excise tax that funds the Trust Fund is levied on domestic sales of coal mined in the United States. On August 16, 2022, the Inflation Reduction Act of 2022 made permanent the temporary increased excise tax rates of \$1.10 per ton of underground mined coal and \$0.55 per ton of surface-mined coal, with a cap of 4.4 percent of the sales price. However, we remain concerned the permanent tax increases are still not sufficient to ensure solvency of the Trust Fund. The Department has proposed a new rule to strengthen security requirements for coal mine operators requesting authorization to self-insure liabilities that it believes would decrease the potential burden of those liabilities on the Trust Fund should the operator become insolvent.

## Significant Concerns

### Managing and Securing Data and Information Systems

We remain concerned about the Department's ability to manage and safeguard its data and information systems. The Department's agencies rely on information technology (IT) systems to obtain and create vast amounts of information and data in carrying out their missions, and included in these data are the PII and personal health information of the public, including federal employees. The Department moved to an IT shared services model that centralized IT for approximately 70 percent of its information systems under the Office of the Assistant Secretary for Administration and Management. While we have seen some improvements in the Department's IT management, we continue to have concerns with its governance structure and information security program.

**These deficiencies continue to hinder the Department in identifying security weaknesses; protecting its systems and data; and detecting, responding to, and recovering from incidents.**

We continue to be concerned with limits on the Chief Information Officer's (CIO) authority, both by structural design and by lack of representation in enterprise level discussions. The Department's CIO is not fully empowered to ensure the Department's IT governance is effectively implemented as the CIO reports to the Assistant Secretary for Administration and Management not the Secretary or Deputy Secretary of Labor as required by law. Furthermore, the CIO position does not have sufficient authority or representation on key senior level management boards.

In addition, we continue to have concerns with the Department's information security program in the following areas:

- cybersecurity oversight,
- supply chain,
- cloud/third party,
- end user/remote security, and
- emerging technology and security requirements, such as zero trust architecture.

Securing the Department's information systems remains a concern as we continue to identify recurring deficiencies in the Department's efforts to manage and implement security controls throughout its information security program. While the Department has moved information systems to its IT shared services model to improve management and security of the systems, the Department has not adequately implemented information security controls and technology tools required to manage and monitor IT security.

In our FY 2022 audit of DOL's information security program,<sup>52</sup> we again identified deficiencies in all five of the information security functional areas (as defined by the NIST Cybersecurity Framework) and in the performance of security control assessments, account management controls, configuration management, and contingency testing. These deficiencies continue to hinder the Department in identifying security weaknesses; protecting its systems and data; and detecting, responding to, and recovering from incidents.

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<sup>52</sup> FY 2022 FISMA DOL Information Security Report: DOL's Information Security Program Not Remaining Current With Security Requirements, Report No. 23-23-001-07-725 (February 10, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/23-23-001-07-725.pdf>



## Significant Concerns

Further, we are still concerned the remaining systems and agencies that are not part of the IT shared services environment are not receiving the governance and oversight required to sufficiently secure all of DOL's data and information systems.

While Supply Chain Risk Management has been an ongoing concern, cyberattacks, such as the 2020 SolarWinds attack,<sup>53</sup> which took advantage of the supply chain process, have increased awareness throughout the industry and the federal government. During our annual information security testing and follow up on prior year recommendations, we determined that DOL has not finalized its Supply Chain Risk Management policies, procedures, and strategies.

The Department continues to move its information systems to a shared services model and expand its use of cloud and third-party providers for its information systems, infrastructure, and services. We remain concerned with the required level of oversight and management of DOL's systems and services. We continue to identify deficiencies in the Department's oversight of information systems managed and/or operated by a third-party on behalf of the Department. As DOL continues this transition, the Department's retention of specialized knowledge and expertise needed to protect and manage its systems, including the contracted ones, remains at risk.

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<sup>53</sup> The SolarWinds attack involved hackers compromising a single supplier's software product, in this case SolarWinds. This product was widely utilized in commercial and government networked computers. The compromised software was then distributed via regular channels without the awareness of the suppliers or users, creating a "backdoor" to the system and allowing an intruder remote access to an infected computer.



Our recent reviews identified inadequate oversight of continuous monitoring reviews and third-party systems. Also, prior year recommendations regarding validation of annual third-party and cloud service provider assessments and continuous monitoring training remain unimplemented.

While the Department has been changing its work and IT landscape to significantly expand remote and telework operations for its employees, we remain concerned with DOL's ability to meet evolving endpoint security requirements. DOL needs to ensure the security between all connection points is sufficiently controlled and managed.

The adequacy of implementing new security technologies and requirements at DOL is also of concern. Our prior reviews identified that DOL has not yet timely implemented current security requirements according to federal laws, regulations, and guidance establishing new and tougher security practices and standards.

These areas represent ongoing risks to the confidentiality, integrity, and availability of DOL's information systems, which are necessary to support the Department's mission. DOL needs to implement the necessary strategies and tools to provide effective management and security for its data and information systems as well as to support the execution of its mission.





# Worker and Retiree Benefit Programs

# Unemployment Insurance Programs

*Enacted more than 80 years ago as a federal-state partnership, the unemployment insurance program is the Department's largest income-maintenance program. This multi-billion-dollar program provides unemployment benefits to eligible workers who become unemployed through no fault of their own. The program is generally administered by states with oversight from DOL's Employment and Training Administration.*

## OIG OVERSIGHT OF THE UI PROGRAM

### BACKGROUND

The OIG has remained committed to meeting the challenges created by the COVID-19 pandemic and to assisting DOL and Congress in improving the efficiency and integrity of the UI program. Strengthening the UI program to prevent fraud before it occurs and to detect it when it does are key objectives to ensure that unemployed workers expeditiously receive much needed benefits while safeguarding tax dollars directed toward that goal. Recovering improper payments creates challenges for all involved. Strengthening programs to prevent improper payments in the first place is critical for program integrity and good stewardship of taxpayer funding.

### OVERVIEW OF THE UI PROGRAM

A joint federal-state program, unemployment insurance is the first economic line of defense against the collective impact of unemployment and acts as a safety-net for individuals who lose their jobs through no fault of their own. The UI program requires states to make benefit payments in a timely manner, providing needed assistance to unemployed workers while ensuring

claimants meet eligibility requirements. It is equally important that the program has sufficient controls in place to quickly determine that benefits are or were paid to the right person in the correct amount. Each SWA:<sup>54</sup>

- administers a separate UI program under its jurisdiction's laws, but follows uniform guidelines established by federal law;
- establishes requirements for eligibility, benefit amounts, and the length of time that benefits can be paid; and
- manages the personnel and system resources to administer its respective programs.

In normal circumstances, UI benefits are generally funded by state employer taxes with administrative costs funded by the federal government. Extensions

<sup>54</sup> When referring to UI, this Semiannual Report to Congress uses "state" or "SWA" to refer to the administrative body that administers the UI program within the state, district, or territory. For the 50 states, as well as the U.S. Virgin Islands, Puerto Rico, and the District of Columbia, that administrative body is a SWA. There are, therefore, 53 SWAs. The CARES Act also provided certain UI benefits to American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Marshall Islands, and the Republic of Palau, provided the territory signs an agreement with the Department.

# Worker and Retiree Benefit Programs

and expansions of coverage and benefits, such as those provided by the CARES Act and subsequent legislation, are also normally funded in whole or in part by the federal government.

ETA is the federal agency responsible for providing program direction and oversight. The OIG conducts independent oversight of the UI program through audits to strengthen the integrity and efficiency of the program and through criminal investigations to detect and deter large-scale fraud. The OIG's federal criminal investigations are time- and resource-intensive and one of the last lines of defense in safeguarding the UI program from fraud.

## OIG SIGNIFICANT CONCERNS

The OIG has repeatedly reported significant concerns with DOL and states' ability to deploy program benefits expeditiously and efficiently while ensuring integrity and adequate oversight. We remain particularly concerned about deployment of UI benefits in response to emergencies, including natural disasters and economic downturns. The OIG has reiterated these concerns regarding the economic downturn created by the pandemic and the hundreds of billions of dollars allocated to the UI program.

Less than a month after the CARES Act passed, we published an advisory report<sup>55</sup> outlining areas of concern that ETA and the states should consider as they implemented the CARES Act UI provisions. Our identification of these areas

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<sup>55</sup> Advisory Report, CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

represents years of work relating to DOL's UI program, including the response to past disasters. One of these areas was state preparedness, specifically, the issues of staffing and system capabilities. Our audit work has confirmed these issues persisted into the pandemic.<sup>56</sup>

## Deploying Benefits Expeditiously and Efficiently

Rapid deployment of CARES Act funding was critical in helping workers in need. Staff at ETA and states struggled during the COVID-19 pandemic as SWAs worked to ensure timely and accurate UI benefits in a time of national emergency. Anticipating and addressing the increased risk that came with the expanded funding was also vital to meeting the intent of the CARES Act. As the OIG's prior audit work has shown, quickly deploying funds can result in shortcomings in the effective and efficient implementation of stimulus programs. For example, a 2011 audit report<sup>57</sup> found states took over a year to spend most of the American Reinvestment and Recovery Act of 2009 (Recovery Act) funding available for emergency staffing and at least 40 percent of funding for this purpose was unspent after 15 months.

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<sup>56</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

<sup>57</sup> Recovery Act: DOL Could Have Better Monitored the Use of Re-employment Services Funds to Adhere to Standards for Transparency and Accountability, Report No. 18-11-005-03-315 (March 31, 2011), available at: <https://www.oig.dol.gov/public/reports/oa/2011/18-11-005-03-315.pdf>



## Worker and Retiree Benefit Programs

In addition, a separate audit on the Recovery Act<sup>58</sup> found \$1.3 billion of the \$7 billion DOL provided to states for UI modernization, including IT modernization, would likely not have been spent before the period of availability expired. To access these funds, states had to meet certain modernization criteria; once accessed, the funds could be spent for several purposes including to modernize IT systems. Of the funds spent from the \$7 billion, states did not always take advantage of the opportunity to modernize their IT systems.

To implement the new UI programs authorized by the CARES Act, states needed sufficient staffing and system resources to manage the extraordinary increases in the number of claims and payments. Our pandemic audit work has confirmed that ETA and states continued to face challenges in these areas as they endeavored to implement the new temporary UI programs, including PUA, PEUC, and FPUC.

We also issued audit reports that advised ETA to establish methods to detect and recover improper payments, including fraudulent payments, and reported on the pandemic program that posed the greatest risk to the UI system: PUA. PUA's expanded coverage, for a population of claimants who were traditionally ineligible to receive UI benefits,<sup>59</sup> presented significant challenges to states as they designed and implemented processes to determine

initial and continued program eligibility. Further, we found the risk of improper payments including fraud was even higher under PUA because claimants could self-certify their eligibility for benefits.

Our subsequent reports identified continued programmatic weaknesses that led to workers unemployed through no fault of their own suffering lengthy delays in receiving benefits. For example, the OIG had audited the Disaster Unemployment Assistance program in 2020 and found the Department had not established adequate controls to ensure benefits were paid timely.<sup>60</sup> Further, states without modernized IT systems faced additional difficulty in promptly implementing the CARES Act programs. For example, for the PEUC program, we identified that it took 49 states, on average, 50 days to implement the program.<sup>61</sup> However, states with modernized IT were able to implement the PEUC program 15 days faster. Similarly, modernized states implemented the PUA program 8 days faster.

We also found that—from April 1, 2020, to March 31, 2021—only 5 of the 53 SWAs were able to timely pay benefits, including the FPUC supplement, to regular UI claimants. As a result, during the year following the passage of the CARES Act, more than six million Americans waited a month or more for CARES Act UI benefits. Furthermore, states are still challenged in paying claimants timely.

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<sup>58</sup> Recovery Act: More Than \$1.3 Billion in Unemployment Insurance Modernization Incentive Payments Are Unlikely to Be Claimed by States, Report No. 18-10-012-03-315 (September 30, 2010), available at: <https://www.oig.dol.gov/public/reports/oa/2010/18-10-012-03-315.pdf>

<sup>59</sup> The new PUA program extended unemployment benefits to self-employed, independent contractors, those with limited work history, and other individuals not traditionally eligible for unemployment benefits who were unable to work as a direct result of COVID-19.

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<sup>60</sup> ETA Should Do More to Assist Vulnerable States Prepare for Disaster Unemployment Assistance Program Implementation, Report No. 04-20-002-03-315 (September 29, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/04-20-002-03-315.pdf>

<sup>61</sup> Also, the 12 states we selected for in-depth analysis were generally unable to demonstrate they met the payment promptness standard ETA established for regular UI payments, which is to pay 87 percent of claimants within 14 to 21 days.

# Worker and Retiree Benefit Programs

For the month of January 2023, only 23 percent of states were paying regular UI claimants timely versus 75 percent before the pandemic started.<sup>62</sup>

Additionally, we identified that states may have inadvertently applied a racial or gender bias when providing benefits to claimants and did not provide adequate protections for claimants' personal data. Specifically, to combat imposter claims, 45 percent of states hired identity verification service contractors that used facial recognition technology. In 2019, NIST's<sup>63</sup> Information Technology Laboratory reported it found empirical evidence that the algorithms<sup>64</sup> used in current facial recognition technology have a racial and gender bias. Furthermore, 15 of 24 (63 percent) of state contracts did not include privacy security measures based on the National Strategy for Trusted Identities in Cyberspace<sup>65</sup> necessary to protect UI claimants' biometric data.

Moreover, in an effort to expeditiously and efficiently provide UI benefits, states improperly paid billions of dollars. In May 2021, ETA provided guidance to

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<sup>62</sup> Based on OIG analysis of data on ETA's public reporting on States' UI Benefit Timeliness and Quality, available at: <https://oui.doleta.gov/unemploy/btq.asp>

<sup>63</sup> Founded in 1901, NIST is one of the nation's oldest physical sciences laboratories and a non regulatory agency. Its mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life.

<sup>64</sup> An algorithm, according to Cambridge Dictionary, is a set of mathematical instructions or rules that, especially if given to a computer, will help to calculate an answer to a problem.

<sup>65</sup> The National Strategy for Trusted Identities in Cyberspace is a federal government initiative launched in 2011 to encourage private sector actors to adopt measures enhancing privacy of personally identifiable information on the internet, including biometric data.

states on the waiving of recovery of overpayments when the claimant was without fault and if the repayment would be contrary to equity and good conscience. This guidance also outlined limited circumstances when the states could use blanket waivers in lieu of recovering overpayments. While the Department has provided guidance stating recovery of fraudulent payments may not be waived, we are concerned that states may have unintentionally waived or will waive fraudulent payments. As of March 28, 2023, states reported waiving more than \$4 billion in pandemic-related overpayments. The OIG has planned work to assess the effects of the guidance on waivers and blanket waivers.

## History of Improper Payments, including Fraud

For more than 20 years, the OIG has reported on the Department's challenges to measure, report, and reduce improper payments in the UI program, which has experienced some of the highest improper payment rates across the federal government. The reported improper payment rate estimate for the regular UI program has been above 10 percent for 15 of the last 19 years. In the last 2 years, ETA has estimated an improper payment rate of 18.71 percent and 21.52 percent, respectively. Further, ETA estimated a fraud rate of 8.57 for Program Year 2021, or a 170 percent increase over the prior year's fraud rate.<sup>66</sup>

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<sup>66</sup> ETA estimated the fraud rate as part of their Benefit Accuracy Measurement system reporting for the program year July 1, 2020, through June 30, 2021. The Benefit Accuracy Measurement system is designed to determine the accuracy of paid and denied claims in three major UI programs: regular State UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex Servicemembers. The fraud rate for 2022 is likely to be published in October 2023.

# Worker and Retiree Benefit Programs

The UI program requires states to make benefit payments while ensuring claimants meet eligibility requirements. A state may determine a payment is improper after a claimant receives benefits based on new information that was unavailable when the benefit payment was approved or as a result of the requirement that claimants be provided with due process prior to stopping payment of benefits. The leading causes of improper payments have historically been:

- **Claimants Do Not Meet Work Search Requirements**<sup>67</sup> – Claimants who fail to demonstrate they meet state requirements for work search;
- **Benefit Year Earnings** – Claimants who continue to claim benefits after they return to work or who misreport earnings during a week in which benefits are claimed;
- **Employers Do Not Timely Report Employees' Separation** – Employers or their third-party administrators who fail to provide timely and adequate information about why individuals separated from their employment; and
- **Fraud** – Claims based on fraudulent schemes, such as those perpetrated during the pandemic.<sup>68</sup>

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<sup>67</sup> The Middle Class Tax Relief and Job Creation Act of 2012 amended the Social Security Act to require that individuals receiving UI benefits must be able to work, available to work, and actively seeking work as a condition of eligibility for regular compensation for any week. Accordingly, states generally require that unemployed workers demonstrate they were actively seeking work. Work search overpayments occur when states pay UI claimants who do not demonstrate that they were actively seeking work.

<sup>68</sup> ETA has included fraud as an element of the leading causes rather than as a separate cause. From July 2016 to March 2020, the other three causes resulted in over \$9 billion in improper payments. Of this total, more than \$3 billion was attributable to fraud. Since the pandemic started, fraud has significantly increased.

## A PERFECT STORM

Following the start of the pandemic in the United States in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels. Prior to the pandemic, numbers of UI claims were historically low. On March 14, 2020, the Department reported 282,000 initial unemployment claims. Within 2 to 3 weeks, initial claims rose to 10 times pre-pandemic levels, far higher than state systems were designed to handle.<sup>69</sup> Within 5 months, through August 15, 2020, the Department reported more than 57 million initial claims, the largest increase since the Department began tracking UI data in 1967.

**Following the start of the pandemic in the United States in early 2020, unemployment compensation claims rose exponentially to historically unprecedented levels.**

The CARES Act provided significant funding to the UI program, which resulted in hundreds of billions of dollars in additional payments. New UI programs under the CARES Act meant more workers qualified.<sup>70</sup> Further, unemployed workers received a supplement per week in addition to their regular benefit amount and individuals who exhausted their regular unemployment benefits were provided additional weeks of unemployment compensation. Also, certain UI claims could be backdated to the beginning of the eligibility period. With the

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<sup>69</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

<sup>70</sup> The PUA program covered workers not typically covered by UI who could self-certify that they were able to and available for work but unemployed due to COVID-19-related reasons.

## Worker and Retiree Benefit Programs



UI debit cards seized during a search warrant were associated with over 180 fraudulent UI claims resulting in more than \$3 million in fraud.

legislative extensions, claimants could receive up to 79 weeks of pandemic-related UI payments.

In June 2020, the OIG provided a member briefing<sup>71</sup> and a statement for the record<sup>72</sup> to Congress highlighting challenges DOL and states faced in administering and overseeing the UI program as well as the substantially increased fraud risk.

<sup>71</sup> “Subcommittee on Government Operations Briefing with the Inspector General for the Department of Labor,” Member Briefing, Opening Statement of Scott S. Dahl, Inspector General, U.S. Department of Labor; House Committee on Oversight and Reform; Subcommittee on Government Operations (June 1, 2020), available at: <https://www.oig.dol.gov/public/testimony/20200601.pdf>

<sup>72</sup> “Unemployment Insurance During COVID-19: The CARES Act and the Role of Unemployment Insurance During the Pandemic,” Hearing, Statement for the Record of Scott S. Dahl, Inspector General, U.S. Department of Labor; Senate Committee on Finance (June 9, 2020), available at: <https://www.oig.dol.gov/public/testimony/20200609.pdf>

The expanded coverage offered under the PUA program posed significant challenges to states as they implemented processes to determine initial and continued program eligibility for participants. The reliance solely on claimant self-certifications without documentation substantiating the individual’s prior employment or self-employment during the program’s first 9 months rendered the PUA program extremely susceptible to improper payments, including fraud. In March 2022 before the U.S. Senate Committee on Homeland Security and Governmental Affairs,<sup>73</sup> in February 2023 before the U.S. House Committee on Ways and Means,<sup>74</sup> and in March 2023 before the U.S. House Committee on Oversight and Accountability,<sup>75</sup> the OIG provided oral and written testimony that spoke to the continuation of many of these concerns and challenges.

<sup>73</sup> “Pandemic Response and Accountability: Reducing Fraud and Expanding Access to COVID-19 Relief through Effective Oversight,” Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; Senate Committee on Homeland Security and Governmental Affairs (March 17, 2022), available at: <https://www.oig.dol.gov/public/testimony/20220317.pdf>

<sup>74</sup> “The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud,” Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; House Committee on Ways and Means (February 8, 2023), available at: <https://www.oig.dol.gov/public/testimony/02082023.pdf>

<sup>75</sup> “Waste, Fraud, and Abuse Go Viral: Inspectors General on Curing the Disease,” Hearing, Statement for the Record of Larry D. Turner, Inspector General, U.S. Department of Labor; House Committee on Oversight and Accountability, Subcommittee on Government Operations and the Federal Workforce (March 9, 2023), available at: <https://www.oig.dol.gov/public/testimony/03092023.pdf>



## Worker and Retiree Benefit Programs

As the OIG reported, the unprecedented infusion of federal funds into the UI program gave individuals and organized criminal groups a high-value target to exploit. That, combined with easily attainable stolen PII and continuing UI program weaknesses identified by the OIG over the last several years, allowed criminals to defraud the system. Because many states were not prepared to process the extraordinary volume of new UI claims and struggled to implement the new UI programs, some internal controls that had been traditionally used or recommended for the processing of UI claims were not initially applied.

This created multiple high-reward targets where an individual could make a fraudulent claim with relatively low risk of being caught. For example, as time went on, one fraudster could have been issued several UI debit cards, with tens of thousands of dollars on each card. In fact, in an audit, we found 1 claim that was filed from a 3-bedroom house shared the same physical address as 90 other claims and used the same email address as 145 other claims.<sup>76</sup> In total, the likely fraudster(s) received \$1,569,762 in unemployment benefits. In the same audit, we found that, from March 28, 2020, to September 30, 2020, in 4 states, potentially fraudulent claims were paid more than 60 percent of the time.

Estimating the overall improper payment rate for the pandemic UI programs is critical for the efficient operation of the program. ETA and the states, under their program operating responsibilities, must determine the improper payment rate, including the fraud rate, for pandemic UI programs.

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<sup>76</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

In August 2020, we recommended<sup>77</sup> that ETA estimate the improper payment rate for pandemic UI programs. In December 2021, consistent with our recommendation, ETA reported an improper payment rate of 18.71 percent for 2021, which ETA applied to two of the three key pandemic UI programs, PEUC and FPUC. Additionally, in December 2022, ETA reported an improper payment rate of 21.52 percent, which it also applied to PEUC and FPUC.<sup>78</sup>

We previously reported that, applying the 18.71 percent to an estimated \$872.5 billion in federal pandemic UI funding, at least \$163 billion in pandemic UI benefits could have been paid improperly, with a significant portion attributable to fraud. In our February 2023 testimony, we reported updated information, with two primary changes: (1) ETA released its annual improper payment rate estimate for FY 2022 and (2) ETA has recently

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<sup>77</sup> COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation under the CARES Act, Report No. 19-20-008-03-315 (August 7, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

<sup>78</sup> In FY 2022, the Department found the PUA, PEUC, and FPUC programs to be susceptible to significant improper payments. OMB Memorandum M-21-19 requires the Department to produce a statistically valid improper payment and unknown payment rate in the fiscal year following the fiscal year in which the risk assessment determination was made. In the Agency Financial Report, the Department stated FY 2022 is anticipated to be the last year reporting on these programs as they expired on September 6, 2021. ETA's reported improper payment rate estimate of 21.52 percent does not include the PUA program. However, it is the most current improper payment rate from ETA and PUA had significant control weaknesses that indicate the program will have a comparable or greater improper payment rate.



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provided a total for pandemic UI spending.<sup>79</sup> While that expenditure information is likely to be updated, these changes enabled us to report on actual expenditures rather than on estimated funding.

With those updates, more than \$888 billion in total federal and state UI benefits were paid for benefit weeks during the UI pandemic period.<sup>80</sup> Applying the estimated 21.52 percent improper payment rate to the approximate \$888 billion in pandemic UI expenditures, at least \$191 billion in pandemic UI payments could have been improper payments, with a significant portion attributable to fraud. Further, for Program Year 2021, ETA estimated a fraud rate of 8.57 percent, which indicates over \$76 billion was likely paid to fraudsters.

Based on our audit and investigative work, the improper payment rate for pandemic UI programs was likely higher than 21.52 percent. For example, ETA's reported improper payment rate estimates have not included estimates for the PUA program. ETA stated it would report the estimated improper

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<sup>79</sup> According to ETA, the data provided reflects CARES Act UI program activity through January 23, 2023, with the exception of the Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week program, which is through December 31, 2022; data provided regarding the regular UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-Servicemembers programs reflect the monthly totals from April 2020 through September 2021.

<sup>80</sup> With the exception of PUA, for which claims could be backdated to January 27, 2020, we define the UI pandemic period as March 27, 2020, through September 6, 2021. We also note that, according to ETA, it cannot provide final total costs of the programs because states are still processing claims that were for weeks of unemployment prior to expiration of the programs.

payment rate for PUA in 2022. However, OMB granted the Department an extension to report on PUA in FY 2023. As of March 31, 2023, the Department has not yet reported the PUA improper payment rate.

As previously mentioned, PUA had control weaknesses that may have facilitated comparable or greater improper payments. The reliance solely on claimant self certifications without documentation substantiating the individual's prior employment or self-employment during PUA's first 9 months rendered the program extremely susceptible to improper payments including fraud. Notably, in the first 6 months after the CARES Act passed, we found 4 states paid \$1 out of \$5 in PUA benefits to likely fraudsters.<sup>81</sup> Subsequent to our work identifying the fraud risks, Congress took action to require supporting documentation to improve states' abilities to ensure proper claimant eligibility and to mitigate fraud. However, a significant amount of UI benefit money had already been paid improperly.

For example, despite ETA providing states guidance on areas of improper payments as early as May 2020, control issues occurred in some states with PUA forms.<sup>82</sup> ETA notified one state in June 2020 that its form did not include the required questions confirming that claimants are able and available to work. However, by then,

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<sup>81</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

<sup>82</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

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that state had paid more than \$4 billion in PUA benefits, including FPUC. Similarly, in July 2020, ETA notified another state that its PUA monetary determination form did not have a procedure in place for re-determining the claimant’s weekly benefit if the claimant did not provide proof of earnings or provided insufficient proof. That state responded that the problem would be addressed by the end of August 2020. However, by the end of August, that state had paid more than \$25 billion in PUA benefits, including FPUC.

When the OIG identifies anti-fraud measures that may help the program, we share them with the Department and SWAs as appropriate. For example, in alert memoranda issued in February 2021,<sup>83</sup> in

<sup>83</sup> Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas, Report No. 19-21-002-03-315 (February 22, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>

June 2021,<sup>84</sup> and in September 2022,<sup>85</sup> our investigators, auditors, and data scientists collaboratively identified potentially fraudulent UI benefits paid in four high risk areas, to individuals with Social Security numbers: (1) filed in multiple states, (2) of deceased persons, (3) of federal inmates, and (4) used to file for UI claims with suspicious email accounts. As of September 2022, we had identified \$45.6 billion in potential fraud paid in those high-risk areas (see Table 1).

<sup>84</sup> Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>

<sup>85</sup> Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>

**Table 1: Potential Fraud in Four High-Risk Areas, March 2020-April 2022**

High-Risk Area	Total Number of Claimants*	Total Potential Fraud Reported through April 2022
Multistate Claimants	2,011,191	\$28,967,047,154
Deceased Persons	205,494	\$139,483,136
Federal Prisoners**	46,985	\$267,382,013
Suspicious Emails	2,281,136	\$16,265,578,304
<b>Totals***</b>	<b>4,544,806</b>	<b>\$45,639,490,607</b>

\*Claimants can represent more than one claim.

\*\*Federal prisoner data was only available for analysis for the period March 2020 through October 2020.

\*\*\*Totals do not include duplicates that were identified in one or more areas.

Source: OIG analysis of data from SWAs, the U.S. Department of Justice, Federal Bureau of Prisons, and the U.S. Social Security Administration.

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We shared our methodology and underlying data regarding the potential fraud in these high-risk areas with the Department for further dissemination to the SWAs, and we recommended they establish effective controls to mitigate fraud and other improper payments to ineligible claimants. We are currently examining whether states took effective measures to address the four high-risk areas.

In its December 2022 report,<sup>86</sup> GAO included these findings in support of the determination that substantial levels of fraud and potential fraud occurred during the pandemic. GAO noted that the Department has not yet developed an antifraud strategy or addressed the most significant fraud risks in the program. GAO also reported that all six of its October 2021 recommendations to ETA for UI fraud risk assessment remain open. GAO is currently attempting to determine an estimate of fraud in the UI program, having reported a potential minimum of \$60 billion in pandemic related fraudulent UI payments.

## OIG PANDEMIC INVESTIGATIVE WORK

The volume of UI investigative matters currently under review is unprecedented in the OIG's history. Prior to the pandemic, the OIG opened approximately 100 UI investigative matters annually. Since April 1, 2020, the OIG has opened over 200,000 investigative matters concerning UI fraud. That is an increase of more than 1,000 times in the volume of UI work that we are facing. UI investigations now account for approximately 96 percent of the OIG investigative

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<sup>86</sup> GAO, Unemployment Insurance: Data Indicate Substantial Levels of Fraud during the Pandemic; DOL Should Implement an Antifraud Strategy, Report No. GAO-23-105523 (December 22, 2022), available at: <https://www.gao.gov/products/gao-23-105523>

case inventory, compared to approximately 11 percent prior to the pandemic.

In response to the extraordinary increase in oversight demands, the OIG hired additional criminal investigators; increased the caseload of investigators already onboard; deployed federal and contract staff to review DOL and states' efforts; and strengthened our data analytics program. In addition, we took several other actions to augment our efforts, including the following:

- initiated the development of a National UI Fraud Task Force,<sup>87</sup> alongside DOJ;
- collaborated with DOJ on the strategic assignment of 12 term-appointed assistant United States attorneys assigned solely to prosecute UI fraud;
- established a multi-disciplinary Pandemic Rapid Response Team within the OIG;
- appointed a National UI Fraud Coordinator to manage our national investigative response to UI fraud;
- appointed seven Regional UI Fraud Coordinators to partner with SWAs and federal, state, and local law enforcement on UI fraud matters in their geographic areas of responsibility;
- leveraged resources from the Council of the Inspectors General on Integrity and Efficiency, Pandemic Response Accountability Committee (PRAC);
- collaborated with state auditors to help develop their audit strategies for the CARES Act UI programs;

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<sup>87</sup> More information on the National UI Fraud Task Force is available at: <https://www.justice.gov/coronavirus/national-unemployment-insurance-fraud-task-force>

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- joined the DOJ COVID-19 Fraud Enforcement Task Force;<sup>88</sup>
- implemented an extensive outreach and education program targeted to SWAs, the Department, financial institutions and their associations, law enforcement agencies, and the public to inform and raise awareness regarding fraud trends, best practices, red flags, and more;<sup>89</sup> and
- joined DOJ's Pandemic Fraud Strike Force Teams initiative.<sup>90</sup>

As the primary federal law enforcement agency responsible for providing oversight of the UI

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<sup>88</sup> DOJ Office of Public Affairs, "Attorney General Announces Task Force to Combat COVID-19 Fraud," press release (May 17, 2021), available at: <https://www.justice.gov/opa/pr/attorney-general-announces-task-force-combat-covid-19-fraud>

<sup>89</sup> The OIG has issued or assisted in issuing the following alerts: UI fraud consumer protection guide, UI fraud investigations guide, UI fraud alert for state/local law enforcement, UI text message phishing alert, UI fraud and phishing alert, UI fraud and identity theft alert, and UI detection and mitigation alert for financial institutions. These are available at: [https://www.oig.dol.gov/OIG\\_Pandemic\\_Response\\_Portal.htm](https://www.oig.dol.gov/OIG_Pandemic_Response_Portal.htm).

<sup>90</sup> The OIG joined the DOJ and other federal law enforcement partners as participants on the DOJ's COVID-19 Strike Force Teams initiative, announced on September 14, 2022. These Strike Force teams operated out of U.S. Attorneys' Offices in the Southern District of Florida, the District of Maryland, and a joint effort between the Central and Eastern Districts of California. They used dedicated special agents from the OIG to focus on significant fraud schemes with an international nexus. DOJ, "Department Announces COVID-19 Fraud Strike Force Teams," press release (September 14, 2022), available at: <https://www.justice.gov/opa/pr/justice-department-announces-covid-19-fraud-strike-force-teams>

program, the OIG has vigorously pursued COVID-19 pandemic related UI fraud. In fact, we announced in September 2022 that OIG investigations had resulted in more than 1,000 individuals being charged with crimes involving UI fraud since March 2020.<sup>91</sup> This number has risen.

As of March 2023, our pandemic investigations have resulted in upwards of 700 search warrants executed and over 1,300 individuals charged with crimes related to UI fraud. These charges resulted in more than: 700 convictions; 13,000 months of incarceration; and over \$920 million in investigative monetary results. We have also referred over 29,000 fraud matters that do not meet federal prosecution guidelines back to the states for further action.

In one recent OIG investigation, a YouTube rapper was sentenced to 77 months in prison and was ordered to pay more than \$700,000 in restitution for his role in a UI fraud scheme, which caused more than 90 fraudulent PUA claims to be filed with the California Employment Development Department (EDD). The rapper previously bragged about his ability to defraud the EDD in a music video posted on YouTube and in postings on his Instagram account. In the music video called "EDD," he boasted about using the fraudulently obtained debit cards and getting rich quickly.

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<sup>91</sup> "Labor Watchdog's Pandemic Work Results in More Than 1,000 Individuals Charged with UI Fraud and \$45.6 Billion Identified in Potentially Fraudulent Pandemic UI Benefits," press release (September 22, 2022), available at: <https://www.oig.dol.gov/public/Press%20Releases/DOL-OIG%20Pandemic%20Work%20Results%20in%20More%20Than%201000%20Individuals%20Charged%20with%20UI%20Fraud.pdf>. For more details about OIG investigations, please visit: [https://www.oig.dol.gov/OIG\\_Pandemic\\_Response\\_Portal.htm](https://www.oig.dol.gov/OIG_Pandemic_Response_Portal.htm).



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During the execution of a UI fraud search warrant, OIG agents recovered a ballistic vest, UI debit cards, and deadly weapons, including three ghost guns, which are privately made, non-serialized firearms that are untraceable.

In another OIG investigation, a Federal Bureau of Prisons inmate, already incarcerated on an unrelated fraud conviction, was sentenced to 41 months in prison in connection with a scheme to defraud multiple SWAs and the U.S. Small Business Administration of more than \$2.2 million in COVID-19 pandemic assistance. The inmate conspired with multiple individuals to submit more than 240 fraudulent UI benefit claims to over 20 SWAs. The inmate also successfully obtained a fraudulent Paycheck Protection Program loan of more than \$20,000. The inmate participated in the scheme within the confines of the Federal Correctional Complex in Allenwood, Pennsylvania, and members of the conspiracy transferred portions of the fraud proceeds to the inmate via wire transfer into the inmate's prison commissary account.

### Working with Domestic and International Law Enforcement Partners

Early in the pandemic, the OIG worked with the DOJ to create the National UI Fraud Task Force, a nine-agency federal task force focused on law enforcement intelligence sharing, deconfliction, joint national and regional messaging, and the effective use of investigative and prosecutorial resources. The National UI Fraud Task Force has also worked closely with partners at the International Organized Crime Intelligence and Operations Center (IOC-2) to develop a deconfliction process to coordinate investigative information across federal law enforcement agencies.

Through data analytics and a leads generation process, the National UI Fraud Task Force and IOC-2 partner agencies have identified significant fraud committed against the UI program by domestic and international criminal organizations. Many of these include street-level criminal organizations with ties to illegal guns and drugs. These investigations are ongoing and actively being investigated through the National UI Fraud Task Force, the COVID-19 Fraud Enforcement Task Force, and the COVID-19 Strike Force Teams initiative.

The OIG has been very engaged on DOJ's COVID-19 Fraud Enforcement Task Force. We have representation on its subcommittees involving communication, forfeiture, corporations and large business fraud, and data, and we co-chair the task force's Criminal Enterprise Subcommittee.

The OIG has also participated in other initiatives. For example, since 2020, the OIG has supported DOJ's annual Money Mule Initiative,<sup>92</sup> which aimed

<sup>92</sup> More information about DOJ's Money Mule Initiative is available at: <https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative>



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to raise awareness about and suppress money mule activity. Money mules are people who, at someone else's direction, receive and move money obtained from victims of fraud. The OIG conducted extensive internal and external outreach regarding money mules and identified and targeted money mules in coordination with DOJ and other partner agencies.

In addition, the OIG issued alerts to financial institutions about UI fraud both on its own and jointly with its partners, such as the U.S. Secret Service (Secret Service), the Financial Crimes Enforcement Network, and the National UI Fraud Task Force. One such joint OIG/Secret Service alert<sup>93</sup> served as a framework for the recovery of millions of dollars of fraudulent UI funds being held by financial institutions. Later, in 2021, the OIG authored a National UI Fraud Task Force alert issued through the Financial Crimes Enforcement Network, to financial institutions requesting they identify funds they froze due to suspicion of fraud. The OIG created a process with DOJ and the Secret Service to collect that data and work with those financial institutions to return fraudulent funds to SWAs. The OIG and its law enforcement partners are working with hundreds of financial institutions in response to our request.

The PRAC has also played a pivotal role in amplifying the ability of OIGs to share information and conduct internal and external outreach to stakeholders that have been impacted by pandemic fraud. For example, the OIG worked with the PRAC on social media tool kits related to money

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<sup>93</sup> Secret Service and OIG, "Detection and Mitigation of Unemployment Insurance Fraud Guidance for Financial Institutions," July 6, 2020, available at: [https://www.neach.org/Portals/0/USSS-DOL%20OIG%20UI%20Advisory%207\\_6\\_2020.pdf](https://www.neach.org/Portals/0/USSS-DOL%20OIG%20UI%20Advisory%207_6_2020.pdf)

mule activity and erroneous 1099-G forms that were issued to victims of UI fraud. The OIG has also worked with the PRAC, DOJ, and the Secret Service to create a web-based survey where financial institutions can more broadly report UI and other types of pandemic fraud. This information is being collected by the PRAC, analyzed by its partners, and, if appropriate, sent to field personnel for further action.

The OIG, through its membership in IOC-2, has also been engaged with several allied national police agencies to strategize about pandemic-related fraud and how to best establish practices to share information. The issue of pandemic fraud has not only been an issue for the United States, but it has also negatively impacted our foreign partners' pandemic programs. We have conducted outreach and education related to pandemic fraud, including UI fraud, with our Five Eyes partner countries as participants on the International Public Sector Fraud Forum.<sup>94</sup>

The OIG, IOC-2, and our federal law enforcement partners have identified numerous instances of international organized criminal groups engaged in UI fraud. We will continue to work with our domestic and international law enforcement partners on these matters.

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<sup>94</sup> Five Eyes is an intelligence alliance. The Five Eyes countries include Australia, Canada, New Zealand, the United Kingdom and the United States. The International Public Sector Fraud Forum consists of representatives from organizations from the Five Eyes countries, whose collective aim is to share best and leading practices in fraud management and control across public borders. International Public Sector Fraud Forum guidance is available at: <https://www.gov.uk/government/publications/international-public-sector-fraud-forum-guidance>.

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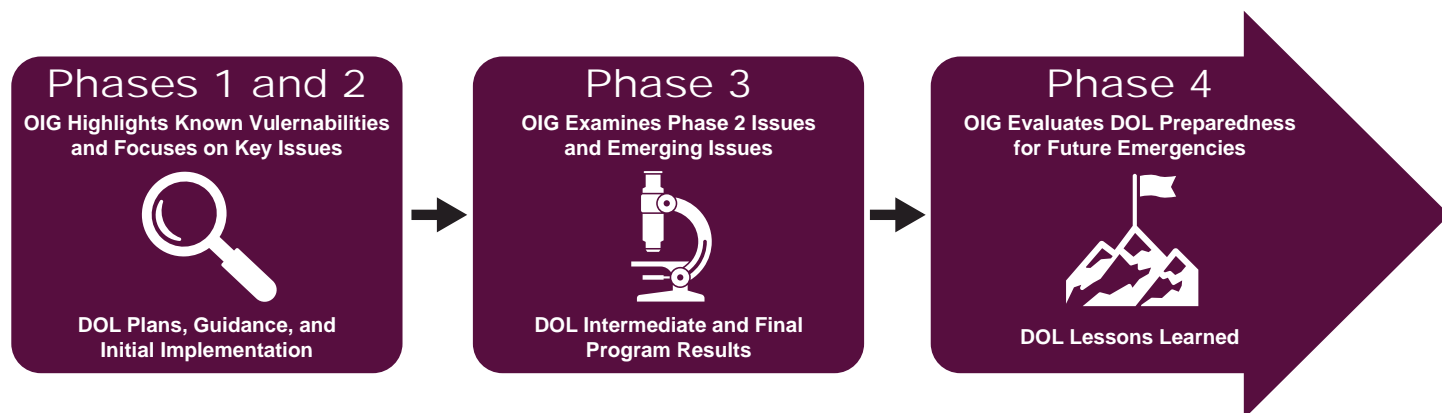
## OIG PANDEMIC OVERSIGHT WORK

In April 2020, shortly after CARES Act enactment, we published our Pandemic Response Oversight Plan<sup>95</sup> detailing how the OIG would conduct its pandemic oversight, with a significant focus on the UI program. We designed our four-phased plan to provide recommendations to DOL to address current and emerging vulnerabilities with the pandemic response and to prevent similar vulnerabilities from hampering preparedness for future emergencies (see Figure 6).

4-phased pandemic response oversight plan will include recommendations for DOL to strengthen and enhance programs prior to the start of emergencies. We published two plan updates in Spring 2021 and Spring 2022, with another planned for FY 2023.

At the start of the pandemic, we examined past audits including those related to the Recovery Act and the Disaster Unemployment Assistance program,<sup>96</sup> and we assessed comparable lessons learned. As a result, in April 2020, we issued the

**Figure 6: The OIG’s Four-Phased Design for Pandemic Oversight**



Source: OIG Pandemic Response Oversight Plan

Phases 1 and 2, which are complete, focused on DOL’s plans, guidance, and initial implementation of administration and oversight activities. Phase 3 audit work, assessing program results and emerging issues, is ongoing. Our Phase 4 work plans include summarizing our pandemic response oversight work and reporting on lessons learned related to UI, worker safety and health, and employment and training. The results of our

<sup>95</sup> Our Pandemic Response Oversight Plan (updated March 21, 2022) is available at: <https://www.oig.dol.gov/public/oaprojects/Updated%20Pandemic%20Response%20Oversight%20Plan%202022%20for%20Publication.pdf>.

<sup>96</sup> Examples include: Recovery Act: DOL Could Have Better Monitored the Use of Re-employment Services Funds to Adhere to Standards for Transparency and Accountability, Report No. 18-11-005 03 315 (March 31, 2011), available at: <https://www.oig.dol.gov/public/reports/oa/2011/18-11-005-03-315.pdf>; Recovery Act: States Challenged in Detecting and Reducing Unemployment Insurance Improper Payments, Report No. 18-16-005-03-315 (August 2, 2016), available at: <https://www.oig.dol.gov/public/reports/oa/2016/18-16-005-03-315.pdf>; and Audit of Florida Disaster Unemployment Assistance Grant Number 1359 - DR (March 26, 2004), Report No. 04-04-004-03-315 (March 26, 2004), available at: <https://www.oig.dol.gov/public/reports/oa/2004/04-04-004-03-315.pdf>.

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previously noted advisory report<sup>97</sup> identifying six initial areas of concern for ETA and the states to consider while implementing CARES Act UI provisions:

1. state preparedness, specifically the issues of staffing and system capabilities,
2. initial eligibility determination,
3. benefit amount,
4. return to work,
5. improper payment detection and recovery, and
6. program monitoring.

Our identification of these areas represents at least 16 years of work relating to DOL's UI program, including the responses to past disasters. The advisory report outlined years of weaknesses and recommendations identified by the OIG to strengthen the UI program. Many of these issues came to fruition. DOL and states must apply lessons learned during the COVID-19 pandemic to correct additional weaknesses identified prior to the next disaster.

We have issued several subsequent reports, including alert memoranda addressing urgent concerns, involving the UI program, such as the following:

- In May 2020, we issued an alert memorandum<sup>98</sup> describing our concerns regarding claimant

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<sup>97</sup> Advisory Report: CARES Act: Initial Areas of Concern Regarding Implementation of Unemployment Insurance Provisions, Report No. 19-20-001-03-315 (April 21, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-001-03-315.pdf>

<sup>98</sup> Alert Memorandum: The Pandemic Unemployment Assistance Program Needs Proactive Measures to Detect and Prevent Improper Payments and Fraud, Report No. 19-20-002-03-315 (May 26, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-002-03-315.pdf>

self-certification in the PUA program. In our view, reliance on such self-certifications rendered the PUA program highly vulnerable to improper payments including fraud.

Subsequent to our work, Congress took action to require claimants to submit documentation substantiating employment or self employment to improve states' abilities to ensure proper claimant eligibility and to mitigate fraud through the Consolidated Appropriations Act, 2021.

- In August 2020, we reported<sup>99</sup> states did not use existing tools effectively to combat fraud and other improper payments. We also stated ETA should work with the OIG to obtain access to state claimant data that could be used to identify and disrupt fraudulent schemes that threaten the integrity of UI programs, including those under the CARES Act.
- In May 2021, we reported<sup>100</sup> that DOL and states struggled to implement the three pandemic UI programs that posed the greatest risk for fraud, waste, and abuse: PUA, PEUC, and FPUC. Specifically, DOL's guidance and oversight did not ensure states: implemented the programs and paid benefits promptly, performed required and recommended improper payment detection and recovery activities, or reported accurate and complete program activities. This occurred primarily because states' IT systems were not modernized, staffing resources were insufficient

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<sup>99</sup> COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act, Report No. 19-20-008-03-315 (August 7, 2020), available at: <https://www.oig.dol.gov/public/reports/oa/2020/19-20-008-03-315.pdf>

<sup>100</sup> COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs, Report No. 19-21-004-03-315 (May 28, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>

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to manage the increased number of new claims, and, according to state officials, ETA's guidance was untimely and unclear.

- In November 2021, we issued<sup>101</sup> the Department a qualified opinion, for the first time in 25 years, on its consolidated financial statements and reported one material weakness related to pandemic-related UI funding. There were two primary causes for this issue: (1) the Department being unable to support more than \$47 billion it estimated for UI claims in appeal or unprocessed as of September 30, 2021, and (2) unreliable reporting of more than \$4 billion in UI benefit overpayments due to certain states' non-reporting of UI overpayment activity.
- In July 2022, we reported<sup>102</sup> that the Department did not meet the requirements for compliance with the Payment Integrity Information Act of 2019 for FY 2021. The Payment Integrity Information Act of 2019 requires federal agencies to identify programs susceptible to significant improper payments, estimate the improper payments for those programs, and report on actions to reduce the improper payments in those programs. While DOL met three of the six compliance requirements for UI programs, we found DOL did not meet the other three requirements: it did not publish all improper payment estimates, did not demonstrate improvement from the

improper target rate published in FY 2020, and did not report an improper payment rate of less than 10 percent.



- In August 2022, we issued an alert memorandum<sup>103</sup> describing our concerns regarding states either not submitting required CARES Act UI program reports to ETA or reporting zero activity. We found the reporting to be deficient for the eight reports we examined. For the PUA program, which was highly susceptible to improper payments including fraud, seven states reported zero overpayments for all months during the entire program period of March 2020 through September 2021. Without accurate state performance information, Congress and ETA are not able to: fully assess state activities, mitigate the risk of overpayments including fraud, identify program weaknesses,

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<sup>101</sup> FY 2021 Independent Auditor's Report on the DOL Financial Statements, Report No. 22-22-003-13-001 (November 19, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2022/22-22-003-13-001.pdf>

<sup>102</sup> The U.S. Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2021, Report No. 22-22-007-13-001 (July 1, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/22-22-007-13-001.pdf>

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<sup>103</sup> Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs, Report No. 19-22-004-03-315 (August 2, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-004-03-315.pdf>



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or establish lessons learned that may be leveraged to improve states' performance under similar, future temporary programs.

- As of September 2022, we have issued three alert memoranda<sup>104</sup> that identified a total of \$45.6 billion in potentially fraudulent UI benefits paid from March 2020 through April 2022 in the four specific high-risk areas previously mentioned, to individuals with Social Security numbers: (1) filed in multiple states, (2) of deceased persons, (3) of federal prisoners, and (4) used to file UI claims with suspicious email accounts. In the second and third memoranda, we recommended ETA implement immediate measures to ensure ongoing OIG access to UI claims data for audit and investigative purposes and expedite regulatory updates to require ongoing disclosures of UI information to the OIG for audits and investigations of federal programs.

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<sup>104</sup> (1) Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas, Report No. 19-21-002-03-315 (February 22, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-002-03-315.pdf>;

(2) Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>; and

(3) Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>

- In September 2022, we reported<sup>105</sup> ETA and states did not protect pandemic related UI funds from historic levels of improper payments including fraud nor from payment delays. We attributed this to four causes: lack of eligibility testing, untimely oversight, PUA self-certification, and the 3-month suspension of a primary oversight tool. Additionally, DOL's interpretation of its regulations on data access hindered the OIG's timely and complete access to UI claims data to assist in detecting and deterring fraud. We estimated that, in the initial 6 months after the CARES Act passed, 4 states paid \$30.4 billion in PUA and FPUC benefits improperly including \$9.9 billion paid to likely fraudsters. Further, based on our analysis of ETA's timeliness reports, at least 6.2 million American workers nationwide waited a month or more for pandemic-related UI benefits during the year after the CARES Act passed.
- In December 2022, for the second straight year, we issued<sup>106</sup> the Department a qualified opinion on its consolidated financial statements and reported one material weakness related to pandemic-related UI funding. There were two primary causes for this issue: (1) the Department was unable to support \$7.9 billion it estimated in remaining pandemic-related UI claims in appeal or unprocessed as of

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<sup>105</sup> COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments including Fraud or from Payment Delays, Report No. 19-22-006-03-315 (September 30, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-006-03-315.pdf>

<sup>106</sup> FY 2022 Independent Auditor's Report on the DOL Financial Statements, Report No. 22-23-002-13-001 (December 13, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2023/22-23-002-13-001.pdf>



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September 30, 2022, and (2) the Department was unable to support the \$3.5 billion it estimated in remaining pandemic-related UI benefit overpayment receivables.



- In March 2023, we issued an alert memorandum<sup>107</sup> describing our concerns regarding the identity verification service contractors that states hired to combat imposter claims being filed with stolen or synthetic<sup>108</sup> identities. Approximately 45 percent of states hired identity verification service contractors that used facial recognition technology. However, facial recognition technology has a demonstrated racial and gender bias. Additionally, some states did not include privacy security measures based on recommendations by the National Strategy for Trusted Identities in Cyberspace necessary to protect UI claimants' biometric data.

<sup>107</sup> Alert Memorandum: ETA and States Need to Ensure the Use of Identity Verification Service Contractors Results in Equitable Access to UI Benefits and Secure Biometric Data, Report No. 19-23-005-03-315 (March 31, 2023), available at: <https://www.oig.dol.gov/public/reports/oa/2023/19-23-005-03-315.pdf>

<sup>108</sup> A synthetic identity is a false identity created from a combination of real and fake information.

## OIG RECOMMENDATIONS

The OIG has made several recommendations to DOL and Congress to improve the efficiency and integrity of the UI program. While action has been taken to resolve some recommendations, further action is needed to close them. Summaries of key recommendations that remain open follow. Additionally, we have highlighted three high priority recommendations for Congress at the end of the section.

### OIG Recommendations to DOL

#### OIG Access to Claim and Wage Data

- Implement immediate measures to ensure ongoing OIG access to UI claimant data and wage records for all audit and investigative purposes
- Expedite regulatory updates to require ongoing disclosures of UI information to the OIG for all audits and investigations of federal programs

#### Staffing and Systems for Prompt Payments during Emergencies

- Continue to work with states to develop, operate, and maintain a modular set of technological capabilities (i.e., staffing and replacing legacy IT systems) to modernize the delivery of UI benefits to sufficiently manage and process sudden spikes in claims volume during emergencies or high unemployment
- Conduct a study to assess:
  - o the technological needs of the UI programs to determine the capabilities that need to be upgraded or replaced,

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- o the features necessary to effectively respond to rapid changes in the volume of claims in times of emergency or high unemployment,
- o the capabilities needed to ensure effective and equitable delivery of benefits, and
- o the capabilities to minimize fraudulent activities
- Develop standards for providing clear and reasonable timeframes to implement temporary programs to establish expectations for prompt benefit payments to claimants

## Controls for Improper Payments

- Establish effective controls, in collaboration with SWAs, to mitigate fraud and other improper payments to potentially ineligible claimants, including multistate claimants, claimants who used Social Security numbers of deceased persons and federal prisoners, and claimants with suspicious email accounts
- Include CARES Act UI transactions in the Benefit Accuracy Measurement system or develop an alternative methodology to reliably estimate improper payments for those programs
- For DOL financial statements, design and implement controls to ensure management's reviews of [UI program] estimates are performed at a sufficient level of detail and adequate documentation is maintained to assess the reasonableness of the estimates

## Guidance and Assistance to States

- Assist states with claims, overpayment, and fraud reporting to create clear and accurate information. Then, use the overpayment and fraud reporting to prioritize and assist states with fraud detection and recovery

- Examine the effectiveness of the Benefit Accuracy Measurement<sup>109</sup> system contact verification process to ensure it reflects the current methods claimants use to seek work

## Coordination with Congress

- Work with Congress to establish legislation requiring SWAs to cross-match in high-risk areas, including with individuals with Social Security numbers: filed in multiple states, of deceased persons, of federal prisoners, and with suspicious email accounts

## OIG Recommendations to Congress

In addition, the OIG encourages Congress to consider and adopt DOL proposals to aid the Department's efforts to combat improper payments in the UI program. In its FY 2024 Congressional Budget Justification,<sup>110</sup> the Department proposed provisions designed to provide new and expanded tools and controls for states to help ensure workers are properly paid and to prevent improper payments, including fraud in the UI system.

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<sup>109</sup> The Benefit Accuracy Measurement system, commonly known as BAM, is a quality control statistical survey used to identify errors and support corrective action in the state UI system. It usually focuses on the three major UI programs: regular UI, Unemployment Compensation for Federal Employees, and Unemployment Compensation for Ex-service members. The data are an estimate of the total improper payments in the UI program, in each state and the nation as a whole, based on a statistically valid examination of a sample of paid and denied claims.

<sup>110</sup> U.S. Department of Labor, FY 2024 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations, available at: <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-07.pdf>

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These are similar to DOL proposals included in prior DOL budget requests that would help address UI program integrity and the high improper payment rates in the UI program. The proposals from the President's FY 2024 budget request include the following:

- require SWAs to cross-match UI claims against the National Directory of New Hires;
- require SWAs to cross-match UI claims with a system(s)...that contains information on individuals who are incarcerated;
- require states to disclose information to the OIG;
- allow SWAs to retain up to 5 percent of recovered fraudulent UI overpayments for program integrity use;
- require SWAs to use [UI] penalty and interest collections solely for UI administration; and
- permit the Department to collect and store states' UI claimant data.

These legislative proposals are consistent with previous OIG reporting to improve the UI program.

**The OIG has also recommended that Congress ensure DOL and the OIG have ongoing, timely, and complete access to UI claimant data and wage records for our respective oversight responsibilities.**

The OIG has also recommended that Congress ensure DOL and the OIG have ongoing, timely, and complete access to UI claimant data and wage records for our respective oversight responsibilities. In addition, in our November 2022 Semiannual Report to Congress, the OIG recommended that Congress extend the statute of limitations for fraud involving pandemic-related UI programs and authorize OIG participation in asset forfeiture funds to combat UI fraud and other crimes.

## Highlighted High-Priority Recommendations for Congress

- Extend the statute of limitations for fraud involving pandemic-related UI programs
- Ensure DOL and the OIG have ongoing, timely, and complete access to UI claimant data and wage records
- Ensure effective payment integrity controls to reduce improper payments in all UI programs including temporary ones, such as broader requirements for mandatory cross-matching

## DOL'S PROGRESS

The Department has emphasized the progress it has made in addressing challenges with the UI program. According to DOL, it has instituted efforts to focus on program integrity when implementing the pandemic-related UI programs. These efforts include establishing agreements with states to comply with all applicable requirements to receive funds, issuing operating guidance, and providing technical assistance to SWAs individually and through webinars. DOL has included requirements for SWAs to focus on program integrity in its guidance relevant to UI funds. In addition, DOL has reinforced the need for SWAs to actively work with the OIG to address fraud in the UI program. As previously mentioned, GAO recently reported that DOL has yet to develop an antifraud strategy to ensure it addresses the most significant fraud risks facing the UI system.<sup>111</sup> The Department reported that this process is underway using GAO's fraud risk framework to strengthen the Department's existing fraud risk management activities.

<sup>111</sup> GAO, Unemployment Insurance: Data Indicate Substantial Levels of Fraud during the Pandemic; DOL Should Implement an Antifraud Strategy, Report No. GAO-23-105523 (December 22, 2022), available at: <https://www.gao.gov/products/gao-23-105523>

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The Department has facilitated the OIG's access to UI data but only for benefit weeks covered by CARES Act programs and related extensions. In addition, ETA has required grant recipients to share state UI data with the OIG as a condition of receiving fraud prevention grants offered under ARPA. However, the grant period requiring OIG access to this data ends on December 31, 2025, and all states would need to receive the grants to provide the necessary access. The Inspector General is authorized to have timely access without such constraints to this data under the Inspector General Act of 1978, as amended, and needs access to all UI program data to more effectively do its job.

On August 31, 2021, the Department announced the establishment of the Office of Unemployment Insurance Modernization to work with state and federal partners to modernize and reform the UI system.<sup>112</sup> According to DOL, the Office of Unemployment Insurance Modernization will provide oversight and management of the \$2 billion allotted to UI initiatives by ARPA to prevent and detect fraud, promote equitable access, ensure timely benefit payments, and reduce backlogs.

The Department also noted it has announced and provided grant opportunities to states, including funds for pilot states to engage community-based organizations to help workers learn about UI benefits and related services. These opportunities also support state agencies in delivering timely benefits to workers. DOL stated it has also made progress on providing further grant opportunities, such as for: fraud prevention, promoting equitable

access to UI programs, the Tiger Teams initiative to consult with states in improving UI systems and processes, and the opportunity to participate in its UI IT Modernization Project Claimant Experience Pilot.<sup>113</sup> The Department stated that two states began the Claimant Experience Pilot and the Office of Unemployment Insurance Modernization is working with states on technology and process improvement projects and sharing those with the rest of the UI system.

### OIG ONGOING AND PLANNED WORK

The OIG's efforts to strengthen and protect the UI program continue. In addition to working with our law enforcement partners to combat fraud in the program, we will be issuing additional audit reports covering critical areas of concern and opportunities for improvement in the UI program. Planned and in-progress<sup>114</sup> Phase 3 audit work includes:

- ETA's efforts to ensure UI program integrity;\*
- DOL's oversight of emergency UI administrative transfers to states;\*
- ETA and state efforts to detect and recover overpayments;\*
- adequacy of state IT resources;\*
- adequacy of state staffing resources;\*
- effectiveness of programs for nontraditional claimants;\*
- effectiveness of the Temporary Full Federal Funding program;\*
- effectiveness of the Short-Time Compensation program;\*

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<sup>112</sup> For information about the strategic vision outlined in August 2021 UI modernization plans, a fact sheet is available at: [https://oui.doleta.gov/unemploy/pdf/FactSheet\\_UImodernization.pdf](https://oui.doleta.gov/unemploy/pdf/FactSheet_UImodernization.pdf).

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<sup>113</sup> For more details, Training and Employment Notice No. 16-21 is available at: [https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEN/2021/TEN\\_16-21.pdf](https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEN/2021/TEN_16-21.pdf).

<sup>114</sup> Audits in progress are marked with an asterisk (\*).

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- effectiveness of the Mixed Earners Unemployment Compensation program;\*
- effectiveness of the Emergency Unemployment Relief for State and Local Governmental Entities, Certain Nonprofit Organizations, and Federally Recognized Indian Tribes program;\*
- PRAC Case Study Project on federal pandemic response funds in select geographic areas;\*
- ETA and states' efforts to address multistate claimants;\*
- ETA and states' efforts to address claimants using the Social Security numbers of deceased persons;\*
- ETA and states' efforts to address claimants using the Social Security numbers of federal prisoners;\*
- ETA and states' efforts to address claimants with suspicious email accounts;\*
- concerns over data warehousing and analytics to prevent UI fraud;\*
- mandatory audit of DOL's FY 2022 Compliance with the Payment Integrity Information Act of 2019;<sup>\*115</sup>
- DOL and states' oversight of UI claimants return to work;
- ARPA Equity Grants; and
- impact of waivers on UI overpayments, fraud investigations, and recoveries.

For more information about the OIG's work, please visit our online [Pandemic Response Portal](#).<sup>116</sup>

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<sup>115</sup> A large portion of this annual audit focuses on UI.

<sup>116</sup> Our Pandemic Response Portal is available at: [https://www.oig.dol.gov/OIG\\_Pandemic\\_Response\\_Portal.htm](https://www.oig.dol.gov/OIG_Pandemic_Response_Portal.htm).

### **Alert Memorandum: ETA and States Need to Ensure the Use of Identity Verification Service Contractors Results in Equitable Access to UI Benefits and Secure Biometric Data**

We issued an alert memorandum on urgent equity and security concerns in the UI program because these areas are a crucial part of effective and efficient distribution of UI benefits, especially in times of crisis. Resulting from the economic impact of the COVID-19 pandemic, UI programs have become a target for fraud with significant numbers of imposter claims being filed with stolen or synthetic<sup>117</sup> identities. To combat imposter claims, almost half of the SWAs reported hiring identity verification service contractors that used facial recognition technology. However, we are concerned that the use of identity verification service contractors may not result in equitable and secure access to UI benefits in the processing of UI claims. Our concerns are based on the following risks.

Regarding equity, in 2019, NIST's Information Technology Laboratory reported it found empirical evidence that the algorithms<sup>118</sup> used in current facial recognition technology have a racial and gender bias. To assess identity, facial recognition systems perform facial detection, which identifies the location of key facial features such as the eyes and nose. Facial recognition results depend on how the systems are designed, developed, tested, deployed, and operated. There is no single, standardized system design for facial recognition technologies.

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<sup>117</sup> A synthetic identity is a false identity created from a combination of real and fake information.

<sup>118</sup> An algorithm, according to Cambridge Dictionary, is a set of mathematical instructions or rules that, especially if given to a computer, will help to calculate an answer to a problem.



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Expanding on its 2019 findings, NIST issued a 2022 study<sup>119</sup> that found further bias, stating that it has become apparent that false negative<sup>120</sup> inequities are substantially due to poor photography of certain groups including under-exposure of dark-skinned individuals. Claimants that do not have advanced technological skills or use outdated technology are less likely to be able to submit a high-quality photograph and pass facial recognition eligibility procedures. Further, in June 2022, the GAO reported<sup>121</sup> findings of racial disparity in benefit receipt in the PUA program.

Regarding security, our review of agreements between SWAs and identity verification service contractors indicated that up to 15 of 24 (63 percent) states had contracts that did not include the privacy security measures recommended by the National

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<sup>119</sup> Face Recognition Vendor Test (FRVT) Part 8: Summarizing Demographic Differentials. NISTIR 8429 (July 2022), <https://nvlpubs.nist.gov/nistpubs/ir/2022/NIST.IR.8429.ipd.pdf>

<sup>120</sup> NIST assesses the accuracy of facial recognition algorithms by measuring the two classes of error the software can make: false positives and false negatives. A false positive means the software wrongly considered photographs of two different individuals to show the same person. A false negative means the software failed to match two photographs that, in fact, show the same person. In the context of UI benefits, a false positive would mean an ineligible claimant would be identified as a legitimate claimant for benefits and a false negative would mean an eligible claimant would be identified as a non-legitimate claimant for benefits.

<sup>121</sup> Government Accountability Office, Pandemic Unemployment Assistance: Federal Program Supported Contingent Workers Amid Historic Demand, but DOL Should Examine Racial Disparities in Benefit Receipt, GAO-22-104438 (June 7, 2022), <https://www.gao.gov/products/gao-22-104438>

Strategy for Trusted Identities in Cyberspace<sup>122</sup> necessary to protect UI claimants' biometric data,<sup>123</sup> which is a form of PII.<sup>124</sup> We identified 5 primary issues with the contracts between the SWAs and 10 different identity verification service contractors (see Table 2).

Contractors that use facial recognition technology have access to a large amount of highly-sensitive PII. The risks associated with a biometric data breach raise serious privacy concerns for both the public and the government. Compared to a username or password, which could be changed after a breach,

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<sup>122</sup> The National Strategy for Trusted Identities in Cyberspace is a federal government initiative launched in 2011 to encourage private sector actors to adopt measures enhancing privacy of PII on the internet, including biometric data.

<sup>123</sup> NIST defines biometrics as the measurement of physiological characteristics like—but not limited to—fingerprints, iris patterns, or facial features that can be used to identify an individual.

<sup>124</sup> The Department of Labor defines PII as the following: any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address...) or (ii) by which an agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification. (These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors). Additionally, information permitting the physical or online contacting of a specific individual is the same as [PII]. This information can be maintained in paper, electronic, or other media. Guidance on the Protection of Personally Identifiable Information, last accessed November 15, 2022, <https://www.dol.gov/general/ppii>

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**Table 2: States with Missing Contract Elements that May Affect Security**

Missing Element(s)	No. of States with Missing Contract Elements	No. of States that use Facial Recognition Technology	% of Total
No clear identification whether the contractor would use one to one or one to many matching*	18	24	75%
Did not address the requirements for data storage**	15	24	63%
Did not address the requirement for destroying or disposing of data collected**	13	24	54%
No indication of the identity standards for facial recognition**	10	24	42%
No indication of the method for compliance, audit, or verification**	6	24	25%

\* The use of one-to-one and one-to-many matching are not recommended National Strategy for Trusted Identities in Cyberspace privacy protection measures. However, NIST identified separate bias issues associated with the different types of matching. Therefore, states should ensure the matching type is clearly identified in contracts.

\*\* These contract elements were based upon the privacy security measures recommended by the National Strategy for Trusted Identities in Cyberspace.

Source: OIG review of identity verification service contracts

biometric data is at greater risk from a data breach. The nature of biometric data means that it cannot be changed.

These risks must be addressed and mitigated by appropriate oversight and guidance from ETA. While ETA has issued guidance on identity verification and also on UI benefit equity, ETA has provided minimal guidance<sup>125</sup> that specifically addresses facial recognition technology in administering UI benefits. Without comprehensive guidance, SWAs are at risk of using technology that discriminates against

<sup>125</sup> The guidance where ETA refers to facial recognition technology can be found in its Unemployment Insurance IT Security Guide, which refers SWAs to NIST Special Publication 800-76-2. That publication contains technical specifications for biometric data for the performance of Personal Identity Verification cards.

claimants entitled to receive UI benefits and of not adequately safeguarding claimants' PII. We made three recommendations to ETA to provide additional, specific guidance and to require SWAs to test their systems for bias and design mitigation procedures.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/19-23-005-03-315.pdf>, Report No. 19-23-005-03-315 (March 31, 2023).

## Los Angeles Man Sentenced to More Than 24 Years in Prison for \$5.5 Million COVID Unemployment Insurance Benefits Scam, Tax Fraud, and Drug Trafficking

On March 6, 2023, Edward Kim was sentenced to 292 months in federal prison for fraudulently obtaining approximately \$5.5 million in COVID-related

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UI benefits by: using the identities of State of California prison inmates and other third parties; trafficking fentanyl and methamphetamine; and seeking to fraudulently obtain more than \$356,000 in Economic Impact Payments. He was also ordered to pay approximately \$5.4 million in restitution to the California EDD and more than \$16,000 in restitution to the Internal Revenue Service.

From May 2020 to March 2021, Kim and his co-conspirators submitted more than 450 fraudulent UI claims to the California EDD using the names, Social Security numbers, dates of birth, and other PII of inmates and other victims who they knew were ineligible for benefits. In furtherance of the scheme, Kim and his co-conspirators submitted applications to the California EDD for UI benefits that falsely represented that the inmates and others were unemployed due to the pandemic. He also entered false occupations on the claims and created various email addresses to monitor the status of the applications. He knowingly listed false mailing addresses on the applications, including his current and former addresses, in order to receive California EDD UI debit cards containing UI funds. Kim then utilized the California EDD UI debit cards to withdraw the fraudulent funds at various ATMs and bank branches. In total, he and his co-conspirators received approximately \$5.5 million in fraudulently obtained UI funds.

This is a joint investigation with the Internal Revenue Service, Homeland Security Investigations, the California EDD, the California Department of Corrections and Rehabilitation – Special Service Unit, the La Habra Police Department, and the Hawaii Police Department. *United States v. Edward Kim* (C.D. California)

### **Federal Inmate Sentenced for Role in Stealing More Than \$2.2 Million in Pandemic Assistance Benefits**

On October 20, 2022, Cortney Shields, a Federal Bureau of Prisons inmate, was sentenced to 41 months in prison, to be served consecutive to his current sentence on an unrelated fraud conviction, in connection with a scheme to defraud multiple SWAs and the U.S. Small Business Administration of more than \$2.2 million in COVID-19 pandemic assistance.

From approximately May 2020 through July 2021, Shields conspired with multiple individuals to submit more than 240 fraudulent UI benefit claims to over 20 SWAs. He fraudulently obtained more than \$2.2 million in UI benefits, primarily from the States of Michigan and California. Shields also successfully obtained a fraudulent Paycheck Protection Program loan from the U.S. Small Business Administration of more than \$20,000. Shields participated in the scheme within the confines of the Federal Correctional Complex in Allenwood, Pennsylvania, where he was serving a sentence on an unrelated fraud case. Members of the conspiracy transferred portions of the fraud proceeds to Shields via wire transfer into his Federal Bureau of Prisons commissary account.

This is a joint investigation with the Federal Bureau of Investigation (FBI), United States Postal Service (USPS)-OIG, and U.S. Postal Inspection Service. *United States v. D-1 Cortney Shaquan Shields* (E.D. Michigan)

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### Minnesota Women Plead Guilty to Wire Fraud for their Roles in Stealing Approximately \$6 Million in Pandemic Assistance Funds

On October 13, 2022, Takara Hughes pled guilty to one count of wire fraud for fraudulently applying for more than \$2.4 million in pandemic-related UI benefits and small business loans for herself and others.

On December 13, 2022, Tequisha Solomon pled guilty to one count of wire fraud for fraudulently applying for more than \$7.1 million in pandemic-related UI benefits and small business loans for herself and others.

Between June 2020 and January 2022, Solomon and Hughes participated in a scheme to defraud pandemic-related assistance programs through the filing of false UI applications and fraudulent U.S. Small Business Administration loan applications in their own names. Additionally, as part of the fraud scheme, Solomon and Hughes also submitted numerous fraudulent pandemic-related benefit claims on behalf of other people and charged a fee for submitting those claims. Solomon and Hughes fraudulently submitted more than 200 and 40, respectively, false UI applications on behalf of others with various SWAs, including the California EDD and the State of Minnesota's Department of Employment and Economic Development. Hughes also submitted at least 30 fraudulent small business loan applications on behalf of others for U.S. Small Business Administration Economic Injury Disaster Loans and Paycheck Protection Program loans, which were based upon fake revenue figures and other falsifications.

In total, Solomon fraudulently applied for more than \$7.1 million in pandemic-related funds, causing more

than \$4.7 million to be paid to herself and others in the form of fraudulent UI benefits and small business loan proceeds. Hughes fraudulently applied for more than \$2.4 million in pandemic-related funds, causing more than \$1.2 million to be paid to herself and others in the form of fraudulent UI benefits and small business loan proceeds.

This is a joint investigation with the FBI and the U.S. Postal Inspection Service. *United States v. Tequisha Solomon*, and *United States v. Takara Hughes* (D. Minnesota)

### YouTube Rapper Sentenced to 77 Months in Prison for Role in Unemployment Insurance Fraud Scheme

On December 7, 2022, YouTube rapper Fontrell Antonio Baines, who is also known as "Nuke Bizzle," was sentenced to 77 months in prison and was ordered to pay more than \$700,000 in restitution. He previously pled guilty to mail fraud charges related to his role in a pandemic-related UI fraud scheme.

From at least July 2020 to September 2020, he assisted in executing a scheme to submit, or cause to be submitted, fraudulent UI benefit applications in the names of others, to include identity theft victims. Baines utilized addresses to which he had access in Beverly Hills and Los Angeles, California, to take possession of and use fraudulently obtained California EDD UI debit cards. This scheme caused more than 90 fraudulent PUA claims to be filed with the California EDD, resulting in attempted losses of more than \$1.2 million and actual losses of at least \$700,000.

Baines bragged about his ability to defraud the EDD in a music video posted on YouTube and in postings

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on his Instagram account. In the music video called “EDD,” he boasted about using the fraudulently obtained debit cards and getting rich quickly.

This is a joint investigation with the U.S. Postal Inspection Service and the California EDD. *United States v. Baines* (C.D. California)

### **Bronx Man Sentenced to 40 Months in Prison for Role in Pandemic-Related Unemployment Insurance and Tax Fraud Schemes**

On January 3, 2023, Juan Carlos Castro Gonzalez was sentenced to 40 months in prison and was ordered to pay more than \$570,000 in restitution. He previously pled guilty for his role in pandemic-related UI and tax fraud schemes. The UI fraud scheme resulted in more than \$500,000 in actual losses and over \$3.3 million in intended losses.

From July 2019 to August 2021, Castro Gonzalez worked with others to obtain fraudulent tax refunds and Economic Impact Payments from the Internal Revenue Service, which were benefits under the CARES Act. Additionally, between June 2020 and August 2021, he worked with others to fraudulently obtain UI benefits. In furtherance of the scheme, Castro Gonzalez submitted eligibility certifications to the New York State Department of Labor for UI benefit applications that had been fraudulently submitted using the names and Social Security numbers of victims who were unaware that such applications had been made using their personal information. Once the applications were approved, the funds were sent to specified bank accounts or to pre-paid debit cards, at least some of which were controlled and received by Castro Gonzalez.

This is a joint investigation with the Internal Revenue Service and U.S. Postal Inspection Service. *United States v. Juan Carlos Castro Gonzalez* (S.D. New York)

### **Michigan Man Sentenced for Role in Using Identities of Prison Inmates to File Fraudulent Unemployment Claims**

On December 2, 2022, Terrell Mason was sentenced to 57 months in prison and was ordered to pay approximately \$423,000 in restitution for his role in a UI fraud scheme aimed at defrauding the State of Michigan and the federal government of the United States of funds earmarked for unemployment assistance during the COVID-19 pandemic. Mason previously pled guilty to committing wire fraud and aggravated identity theft for filing fraudulent UI claims.

Mason used the identities of inmates in custody of the Federal Bureau of Prisons and the Michigan Department of Corrections, knowing they were ineligible for such benefits. He obtained the PII from the inmates themselves based on his representations that he would help repair their credit. Mason also purchased inmates’ PII from websites on the dark web. His filing of fraudulent UI claims, and subsequent false verification of the inmates’ continued eligibility, caused the Michigan Unemployment Insurance Agency to continue making benefit payments to the fraudulent accounts.

This is a joint investigation with the Michigan Unemployment Insurance Agency-Fraud Investigation Unit and the FBI. *United States of America v. Terrell Dwayne Mason* (E.D. Michigan)



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### Virginia Inmate Sentenced to 84 Months in Prison for Role in Obtaining Pandemic Unemployment Insurance Benefits for Other Inmates

On November 10, 2022, Bubble A. Jones, a former Virginia Department of Corrections inmate, was sentenced to 84 months in federal prison. He and his family member co-defendants were ordered to pay, jointly and severally, nearly \$300,000 in restitution to the Virginia Employment Commission for their roles in a pandemic-related UI fraud scheme.

Between June and November 2020, Jones was an inmate at the Nottoway Correctional Center in Burkeville, Virginia, when he conspired with his daughter, Kanaejah Parker, and her mother, Tamara Parker, to execute a scheme to defraud the Virginia Employment Commission by filing at least 27 fraudulent UI applications using inmates' PII. Jones provided the PII of other inmates to the Parkers, and they then filed fraudulent UI applications using the information. When the applications were processed and benefits paid out, Jones and the Parkers provided some of the fraudulent benefits to inmates and maintained a portion for themselves. The fraudulent applications included false physical addresses, telephone numbers, email addresses, and last reported employers.

Additionally, on December 1, 2022, co-defendants Tamara Parker and Kanaejah Parker were sentenced to 24 months and 46 months in federal prison, respectively, after entering guilty pleas for their roles in the scheme.

This is a joint investigation with the U.S. Department of Homeland Security-OIG and the Secret Service. *United States v. Jones et al.* (E.D. Virginia)

### Former Mail Carrier and Co-Conspirator Sentenced in Unemployment Insurance Fraud Scheme

On December 12, 2022, Stephen Glover, a former USPS mail carrier, and Travis McKenzie were sentenced for their roles in a mail fraud scheme that involved fraudulently obtaining more than \$250,000 in UI benefits. Glover was sentenced to 41 months in prison and ordered to pay approximately \$151,000 in restitution. McKenzie was sentenced to 41 months in prison and ordered to pay approximately \$448,000 in restitution.

From August 2020 to June 2021, Glover and McKenzie defrauded the California EDD out of hundreds of thousands of dollars of COVID-related UI funds by fraudulently applying for UI benefits. Glover provided McKenzie with addresses on his mail route, which were then used as mailing addresses on the fraudulent UI applications filed with the California EDD using stolen identities. Based on the fraudulent claims, the California EDD mailed out pre-loaded UI debit cards to the addresses listed on the applications and Glover would then intercept the mail containing the cards. In total, Glover admitted to stealing approximately 40 pieces of mail with an attempted loss of more than \$270,000. McKenzie admitted to possessing more than 300 pieces of stolen mail with an attempted loss of more than \$570,000. Both Glover and McKenzie admitted to withdrawing thousands of dollars of fraudulently obtained UI funds in cash from ATMs.

This is a joint investigation with the USPS-OIG and the California EDD. *United States v. Glover et al.*, (C.D. California)

# Office of Workers' Compensation Programs

*The Office of Workers' Compensation Programs (OWCP) administers four major workers' compensation programs: Federal Employees' Compensation Act (FECA), Energy Employees Occupational Illness Compensation (Energy), Black Lung Benefits, and Longshore and Harbor Workers' Compensation.*

*FECA is the largest of the programs and provides workers' compensation coverage to millions of federal, postal, and other employees for work-related injuries and illnesses. Benefits include wage replacement, payment for medical care, vocational rehabilitation, and survivor benefits.*

## OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program

As a fundamental part of its responsibility to provide workers' compensation coverage to more than 2.6 million federal and postal workers, OWCP serves as a steward for taxpayer funds. OWCP must ensure it pays the best available prices for prescription drugs in the FECA program and that the costs represent appropriate care for helping workers heal from illness and injury and return to work when they are able to do so. In FY 2015 and FY 2016, a sharp increase in pharmaceutical<sup>126</sup> spending for the FECA program raised concerns. Subsequent OIG work found OWCP had not done enough to ensure it paid the best prices for prescription drugs.<sup>127</sup> While OWCP significantly decreased spending on opioids and compounded drugs, we remained concerned about OWCP's ability to manage the cost, as well as the use, of pharmaceuticals in the FECA program. Therefore, we contracted with Harper,

Rains, Knight & Company, P.A. (HRK) to determine whether OWCP effectively managed pharmaceutical spending in the FECA program.

HRK found OWCP did not effectively manage pharmaceutical spending in the FECA program from FY 2015 through FY 2020. Specifically, OWCP did not pay the best available prices for prescription drugs. HRK identified up to \$321.26 million in excess spending during the audit period (see Figure 7).<sup>128</sup>

OWCP did not have a process to ensure its pricing was competitive with other comparable payers in the industry. For example, OWCP did not compare its pricing to publicly available pricing benchmarks. Prescription drug prices vary widely in the market, and using multiple pricing lists to compare and identify the lowest prices is a pricing strategy that can reduce overall pharmaceutical spending and aid in saving taxpayer dollars. In addition, OWCP

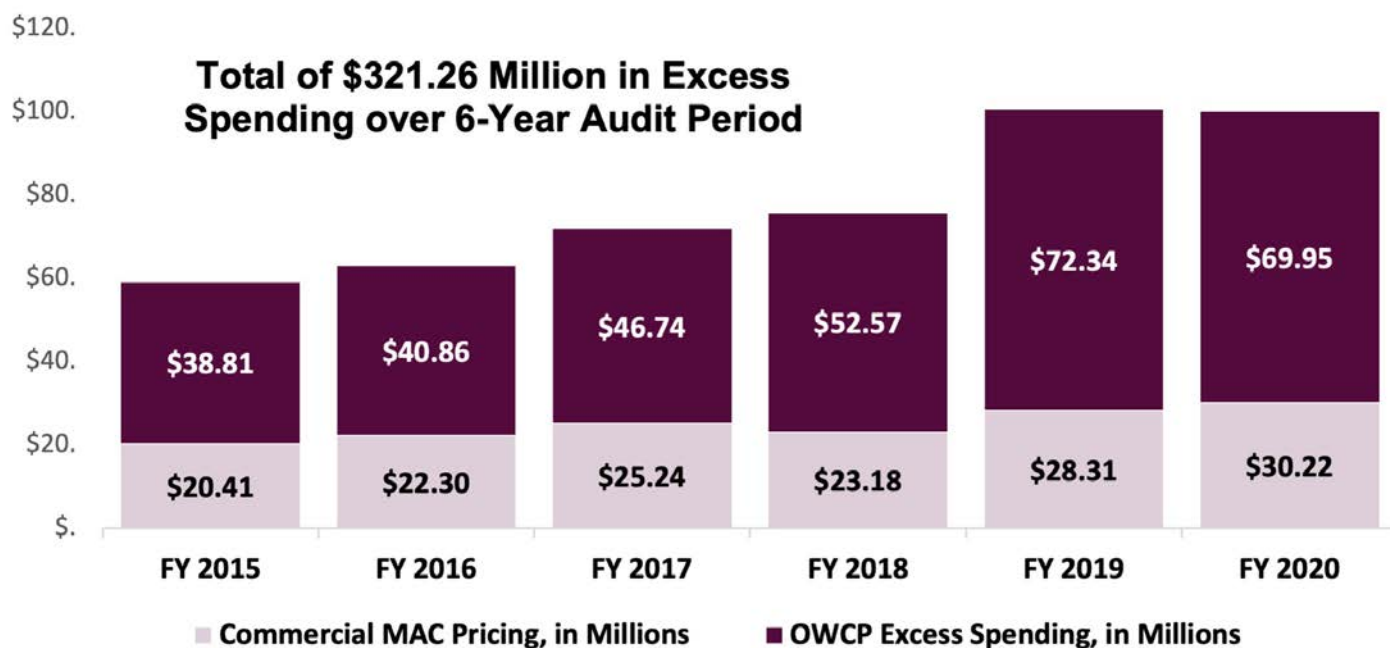
<sup>128</sup> In addition to the comparison between prices OWCP paid and a Commercial Maximum Allowable Cost list, HRK also compared the prices OWCP paid to two publicly available pricing lists: (1) the Affordable Care Act Federal Upper Limit and (2) the National Average Drug Acquisition Cost. Through these comparative analyses, HRK also identified excess spending in the amounts of, respectively, \$85.96 million and \$161.64 million.

<sup>126</sup> Relating to medicinal drugs, or their preparation, use, or sale.

<sup>127</sup> OWCP Must Continue Strengthening Management of FECA Pharmaceuticals, Including Opioids, Report No. 03-10-002-04-431 (May 14, 2019), <https://www.oig.dol.gov/public/reports/oa/2019/03-19-002-04-431.pdf>

## Worker and Retiree Benefit Programs

**Figure 7: Excess FECA Pharmaceutical Spending Using a Commercial Maximum Allowable Cost List, FY 2015–FY 2020**



Source: OIG graphic representation of HRK comparative analysis

did not capitalize on additional ways to reduce pharmaceutical spending, such as taking advantage of manufacturer rebates.

Further, OWCP had issued significant policy and process changes related to claimant prescriptions intended to improve claimant safety and save costs, but it did not effectively monitor pharmaceutical policy changes to ensure implementation. OWCP’s lack of effective monitoring resulted in claimants receiving thousands of inappropriate prescriptions and potentially lethal drugs, which could have caused serious harm to claimants. For example, OWCP paid for more than 98 percent (1,330 of 1,348) of prescriptions for fast acting fentanyl—an extremely potent, potentially lethal, and extremely addictive synthetic opioid—without evidence of required cancer diagnoses (see Table 3).

**Table 3: Transmucosal Immediate-Release Fentanyl Prescriptions without a Required Cancer Diagnosis, FY 2015–FY 2020<sup>129</sup>**

Fiscal Year	Transmucosal Immediate-Release Fentanyl Prescriptions without Required Cancer Diagnosis
2015	487
2016	351
2017	230
2018	153
2019	78
2020	31
<b>TOTAL</b>	<b>1,330</b>

Source: HRK analysis of FECA pharmaceutical data

<sup>129</sup> As the audit period did not include data prior to FY 2015, we do not know how many more fast-acting fentanyl prescriptions OWCP may have approved and paid for in contravention of FECA Bulletin 11-05 in the more than 3 years between May 2011 and September 2014.

# Worker and Retiree Benefit Programs

Additionally, OWCP paid for more than 25,000 non-maintenance early-fill prescriptions<sup>130</sup> and nearly 500 convenience kits—which package multiple medications or items together although the individual items can be purchased at a lower cost—without prior authorization. For example, in FY 2016, OWCP paid a total of \$86 for the two ingredients in a DermacinRx ZRM Pak when purchased individually but paid \$2,098 for the same ingredients when packaged together in a kit, meaning that OWCP unnecessarily paid \$2,012 for packaging or “convenience” alone (see Figure 8).

HRK also found OWCP failed to timely identify and address emerging issues and did not perform sufficient oversight of prescription drugs that are highly scrutinized and rarely covered in workers’

<sup>130</sup> Non-maintenance prescriptions are prescriptions that do not treat chronic or long-term conditions. Early fill prescriptions are prescriptions filled before 75 percent of the prescription timeline has elapsed. Filling non-maintenance prescriptions early resulted in OWCP paying for prescriptions at a higher frequency and volume than necessary, and early-fills can increase the risk of possible misuse or abuse.

compensation programs. As a result, OWCP spent hundreds of millions of dollars on drugs that may not have been necessary or appropriate for FECA claimants. Finally, HRK found OWCP lacked sufficient clinical expertise and guidelines to ensure appropriate pharmaceutical decisions, which could negatively impact claimants’ health, recovery, and return to work.

HRK made 10 recommendations to OWCP to strengthen management of pharmaceuticals in the FECA program, specifically regarding: evaluating alternate pricing methodologies, ensuring implementation of and adherence to policies, identifying emerging issues by developing and implementing an ongoing pharmaceutical monitoring program, ensuring sufficient clinical expertise among FECA staff, and using evidence based clinical guidelines to inform prescription drug coverage policies.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf>, Report No. 03-23-001-04-431 (March 31, 2023).

**Figure 8: Proportion of Ingredients Cost in One Convenience Kit, DermacinRx ZRM Pak**



Source: OIG graphic representation of HRK comparative analysis



# Worker and Retiree Benefit Programs

## Insights on Telehealth Use and Program Integrity Risks in DOL Workers' Compensation Programs during the Pandemic

The PRAC<sup>131</sup> consists of the 20 Inspectors General who provide transparent oversight for pandemic relief. The PRAC was created by the CARES Act to support and coordinate independent oversight of more than \$5 trillion in pandemic relief programs and spending. Recognizing how critical telehealth has been to the federal COVID-19 response, the PRAC Health Care Subgroup—which includes six federal OIGs who oversee agencies that provide or reimburse for health care services—worked together to provide insights to stakeholders about the nature of telehealth and its use across federal health care programs. In support of this effort, we conducted an evaluation to: (1) examine the use of telehealth across DOL workers' compensation programs during the first year of the COVID-19 pandemic and (2) identify emerging risks related to the use of telehealth. Specifically, we evaluated telehealth services provided by OWCP's FECA, Black Lung Benefits, and Energy programs.

As a result of the pandemic, the FECA, Black Lung Benefits, and Energy programs instituted new policies that expanded access to telehealth for injured workers by allowing routine medical care to be provided through telehealth by certain types of medical care practitioners.<sup>132</sup> All three workers'

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<sup>131</sup> For more information, visit: <https://www.pandemicoversight.gov>.

<sup>132</sup> Prior to the pandemic, only the FECA program allowed telehealth. Although telehealth was not specifically authorized prior to the pandemic, the Energy program paid for the services if appropriate for the medical condition. The Black Lung Benefits program did not provide telehealth as an allowable service.

compensation programs experienced dramatic increases in the use of telehealth during the first year of the pandemic compared to the prior year—with OWCP paying more than \$7 million for 34 times more telehealth services. Claimants in the FECA program used approximately 95 percent of these services. Routine appointments with primary care providers or specialists and behavioral health services comprised the vast majority (93 percent) of telehealth services used by claimants.

OWCP had identified potential program integrity risks associated with telehealth, finding that providers could bill for services or supplies that were not rendered, bill for services that are not necessary, upcode their billing,<sup>133</sup> treat claimants without required supervision, and/or bill without appropriate billing codes. OWCP had also found many of the bills for telehealth services did not include proper telehealth modifier codes.<sup>134</sup>

Our analysis of OWCP's telehealth data confirmed that 35 percent of the telehealth services provided during the pandemic lacked telehealth modifier codes. The Black Lung Benefits program expressed concern that it may not be able to identify and monitor telehealth service-related bills if medical providers are not consistently using the telehealth modifier codes. OWCP should consider developing additional guidance for providers to ensure the modifier codes are appropriately and consistently used on medical bills.

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<sup>133</sup> Upcoding is when a health care service is billed at a higher level of complexity or duration than was provided or needed.

<sup>134</sup> Modifier codes are two-digit numbers, characters, or alpha-numeric combinations that provide additional information on a claim. For example, some modifier codes are used to identify telehealth services.

## Worker and Retiree Benefit Programs

As this PRAC study<sup>135</sup> was meant to examine the use of telehealth services across federal programs, we did not develop or provide recommendations to OWCP.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/19-23-002-04-001.pdf>, Report No. 19-23-002-04-001 (December 13, 2022).

### **Houston Pharmacist Sentenced in Multi-Million-Dollar Kickback Scheme**

On October 11, 2022, Khyati Undavia, a pharmacist who controlled and operated Memorial Pharmacy was sentenced to 27 months in prison and ordered to pay approximately \$12 million in restitution, which she paid at the time of sentencing. The sentencing is a result of Undavia's conviction for her role in a conspiracy to pay and receive kickbacks that defrauded federal health care programs, including those administered by OWCP.

From December 2012 through December 2018, Undavia hired employees to market Memorial Pharmacy to physicians as a place to submit compounded drug prescriptions. She paid kickbacks through the marketers to physicians in order to induce them to write prescriptions and submit them to Memorial Pharmacy on behalf of their patients. This practice was in lieu of providing the prescription directly to the patient, which would have allowed the patient to select a pharmacy of their choice.

In some instances, patients were never seen by an actual physician. Instead, physicians would authorize the prescriptions for beneficiaries that a marketer provided.

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<sup>135</sup> The PRAC's full report, Insights on Telehealth Use and Program Integrity Risks Across Selected Health Care Programs during the Pandemic (December 2022), is available at: <https://www.oversight.gov/report/PRAC/Insights-Telehealth-Use-and-Program-Integrity-Risks-Across-Selected-Health-Care-Programs>.

The marketer sometimes paid the physician an illegal kickback for the prescriptions. Other times, Undavia would directly pay the physician an illegal kickback. In total, Undavia received approximately \$22 million from Tricare, OWCP, and the Civilian Health and Medical Program of the U.S. Department of Veterans Affairs.

This is a joint investigation with the USPS-OIG, Department of Defense's Defense Criminal Investigative Service, Drug Enforcement Administration, FBI, and Internal Revenue Service. *United States v. Khyati Undavia* (S.D. Texas)

### **Louisiana Physician Sentenced to 48 Months in Prison and Ordered to Pay More Than \$800,000 to Victims in Workers' Compensation Fraud Conspiracy**

On February 15, 2023, Louisiana physician, Robert Clay Smith, was sentenced to 48 months in prison and was ordered to pay approximately \$827,000 in restitution to workers' compensation insurers for his role in a conspiracy to commit wire fraud, health care fraud, and violations of federal anti-kickback laws.

From 2013 until 2017, Smith conspired with an Arkansas-based company to dispense pain creams and patches to his workers' compensation patients, for which he received a split of the profits. The company acted as the billing agent for Smith, sending the claims to DOL, OWCP, and private insurers. He admitted that, by successfully billing insurers at markups of 15 to 20 times the medication costs, the company paid him 50 to 55 percent of the collected profits. Additionally, Smith did not have a license to dispense medication from his clinic, which is required under State of Louisiana law.

This is a joint investigation with the U.S. Department of Veterans Affairs-OIG, Department of Defense's Defense Criminal Investigative Service, and USPS-OIG. *United States v. Robert Clay Smith* (W.D. Arizona)



# **Worker Safety, Health, and Workplace Rights**

# Occupational Safety and Health Administration

*The mission of the Occupational Safety and Health Administration (OSHA) is to ensure safe and healthful working conditions for workers by setting and enforcing workplace safety and health standards and by providing training, outreach, education, and assistance.*

## COVID-19: OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards

The COVID-19 pandemic has presented OSHA with significant worksite enforcement and inspection challenges in its operations and efforts to safeguard workers. OSHA has the overall responsibility for ensuring safe and healthful working conditions for 130 million workers employed at more than 8 million worksites in the United States. Worksite inspections are an important part of OSHA's enforcement function and are integral to reducing worker injuries, illnesses, and fatalities. Previous OIG work identified a significant reduction in OSHA inspections during the pandemic while complaints significantly increased. Given these risks, we performed an audit to determine whether OSHA's enforcement activities helped protect U.S. workers from COVID-19 health hazards.

We found OSHA's enforcement activities did not sufficiently protect workers from COVID-19 health hazards. Because OSHA had not established controls to ensure citations were issued, OSHA did not issue citations to enforce the standard for recording and reporting occupational injuries and illnesses in 15 percent of sampled fatality inspections. An employer reporting a fatality late, not evaluating work relatedness of exposure, or failing to report a fatality altogether impacts OSHA's ability

to provide prompt assistance to identify the hazard and confirm the hazard has been timely abated to prevent further illness or loss of life.

In one of the sampled cases, an employee died from COVID-19 and the employer failed to report the fatality to OSHA. According to the file, the employer's Public Health Emergency Officer determined the "COVID-19 infection and subsequent death was 50 percent more likely a workplace exposure and the most likely exposure route was inhalation of infective droplets during a shared lunch break with coworkers less than 6 feet apart." Nonetheless, OSHA did not issue a citation for lack of reporting nor did the file contain documentation of the rationale for not doing so. Furthermore, in our evaluation of survey results,<sup>136</sup> we noted 52 percent of OSHA inspectors indicated it has been harder to issue citations for COVID-19 work-related hazards than non-COVID-19 work-related hazards during the pandemic (see Figure 9).

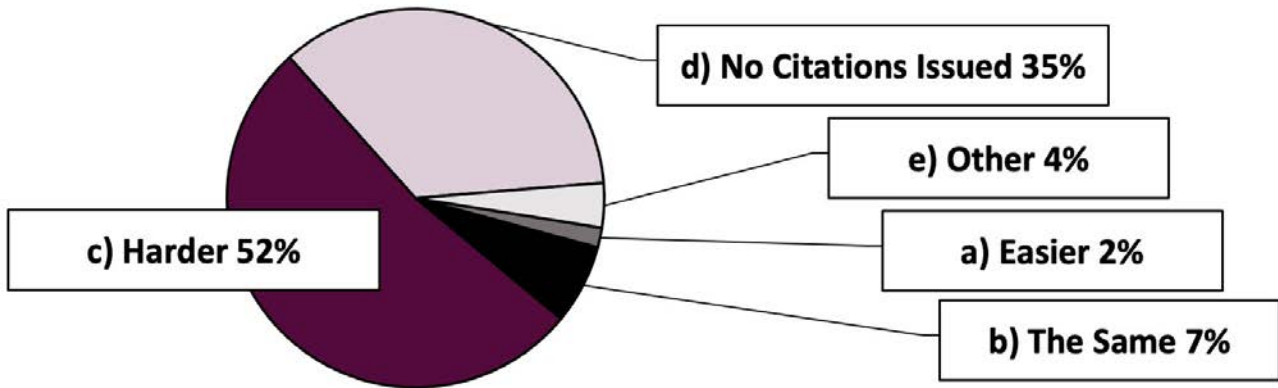
Employers failing to promptly report a fatality violates the standard, and OSHA should issue citations when an employer violates a standard or document its reasons for not issuing citations. OSHA citations are public record and may, therefore, also encourage employers to

<sup>136</sup> We surveyed 710 Compliance Safety and Health Officers to evaluate their experiences conducting inspections during the pandemic; 235 responded. Highlighted results can be found in the report's Exhibit.



# Worker Safety, Health, and Workplace Rights

**Figure 9: COVID-19 versus Non-COVID-19 Citation Issuance Experience**



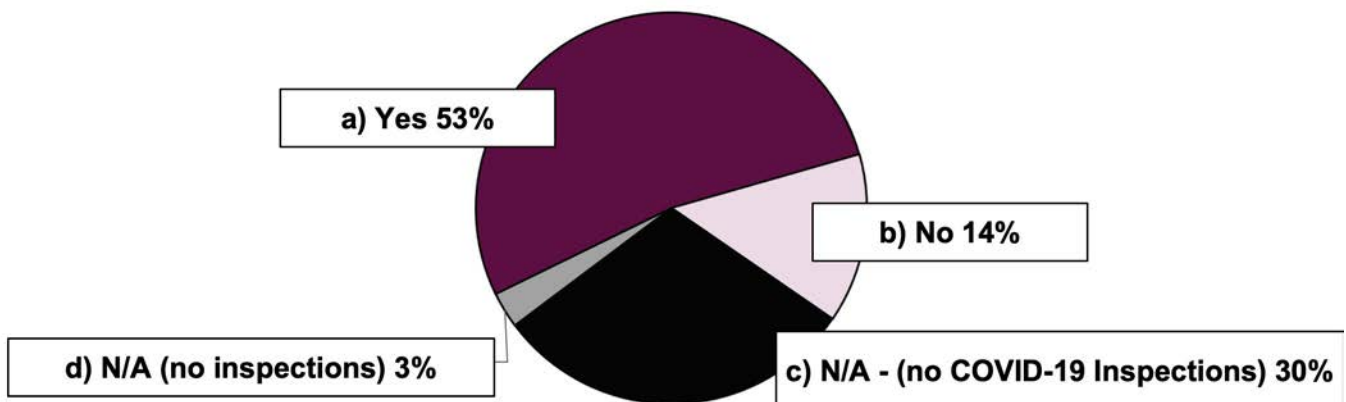
Source: OIG analysis of Compliance Safety and Health Officer survey results

promptly report fatalities and prevent and correct hazards voluntarily. Moreover, evidence of previous violations is a determining factor when OSHA decides whether to schedule a follow-up inspection. If OSHA improves its enforcement for recording and reporting fatalities, it may better protect workers from serious hazards, such as COVID-19 exposure.

We also found OSHA lacks complete information on COVID-19 infection rates at worksites

because it does not require employers to report all COVID-19 cases among workers. OSHA only requires employers to report a work-related fatality, inpatient hospitalization, amputation, or loss of an eye. Also, it is up to employers to determine if an injury or illness is work-related, which is generally far simpler in an amputation case than in the case of an airborne illness. Survey results indicated that 53 percent of OSHA inspector respondents encountered such challenges (see Figure 10).

**Figure 10: Challenges Experienced in Establishing Work-Relatedness for COVID 19 Hospitalizations and/or Fatalities**



Source: OIG analysis of Compliance Safety and Health Officer survey results

## Worker Safety, Health, and Workplace Rights

However, COVID-19 is spreadable regardless of the origin of infections; no matter where an employee contracted the virus, COVID-19 cases in the worksite endanger workers. Requiring employers to notify all employees of positive cases at the worksite is necessary to ensure safe and healthful working conditions. Last, we found OSHA closed inspections without ensuring it received and reviewed all items requested from employers to demonstrate alleged COVID-19 health hazards had been mitigated. This issue occurred because OSHA does not have a tool to ensure it receives and reviews all requested documentation prior to closing inspections. OSHA needs to ensure its recordkeeping procedures require Compliance Safety and Health Officers to capture the most accurate and complete information on worksite hazards so that they can make well-informed decisions on how to protect workers.

Due to the lack of citations, incomplete information on infection rates at worksites, and insufficient evidence of hazard mitigation, there is a heightened risk that workers suffered unnecessary exposure to the virus. To protect workers from pandemic health hazards, OSHA's enforcement activities can be improved. We made five recommendations to OSHA regarding improving its enforcement actions, standards, guidance, and training to better protect workers from exposure to COVID-19 and for future pandemics.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/19-23-001-10-105.pdf>, Report No. 19-23-001-10-105 (October 31, 2022).

### **OSHA Needs to Better Address Complaints and Referrals for Increased Worker Safety**

Part of the way OSHA ensures safe and healthful working conditions for workers nationwide is

through conducting inquiries and inspections of potential hazards. For FY 2019 and FY 2020, inspections from complaints and referrals were slightly greater than 40 percent of OSHA's total inspections. A complainant expressed concern that OSHA may not be adequately considering the statements of complainants and witnesses when responding to complaints and referrals. If OSHA does not adequately consider complainant or witness statements, hazardous conditions may go unidentified and unabated, further endangering workers. We contracted with an independent certified public accounting firm (Firm) to conduct an audit to determine to what extent OSHA ensured complaints and referrals were adequately and timely addressed.

The Firm concluded OSHA did not consistently ensure complaints and referrals were adequately addressed nor regularly enforce hazard abatement timelines. Specifically, the Firm found OSHA did not consistently involve the complainant and/or witnesses in the investigation or inspection process. OSHA has no policy requiring Compliance Safety and Health Officers to interview or otherwise involve the complainant after the complaint is filed, yet that person may have key insights to ensure alleged hazards are being addressed. Of the 76 complaint cases reviewed, OSHA interviewed the complainant in 38 instances (50 percent). In all sampled cases where OSHA interviewed the complainant and/or witnesses, each person was only interviewed once.

The Firm also found OSHA's files did not contain clear reasoning as to why it did not conduct an inspection for 11 out of 30 sampled cases where a complaint or referral met its criteria for conducting an inspection. Of the 30 sampled case files where an inspection was not performed, 11 (37 percent) lacked documentation to support OSHA's consideration of its nine criteria for not conducting an inspection.

# Worker Safety, Health, and Workplace Rights

For example, one complaint alleged an employer failed to provide personal protective equipment; however, the case file lacked documentation in support of OSHA's decision that an inspection was not warranted. Further, the letters to the employer and to the complainant on this decision in the case file were not signed by the area director, indicating the possibility that they may not have been sent. Procedures requiring a review of case files for completeness could improve OSHA's support for its decisions as required by OSHA's Field Operations Manual and further help to protect worker safety and health.

Also, OSHA did not regularly ensure safety and health violations from complaints and referrals were corrected in a timely manner. For example, on February 4, 2020, OSHA received a complaint concerning workers not having cave-in protection to prevent them from being crushed by falling soil. OSHA instructed the employer to abate this condition by April 8, 2020. The employer did abate the condition, but did not supply documentation to verify the abatement until July 2, 2020, 85 days after the deadline. In total for this case, we found employees were possibly unprotected for 149 days from the receipt of the complaint until verification of the abatement.

Without timely abatement, employees may be left possibly unprotected for an extended period of time. Further, without documentation of hazard abatement, OSHA could not support that the employer complied with Section 5 of the Occupational Safety and Health Act of 1970, which requires employers to furnish places of employment free from recognized hazards causing or likely to cause death or serious physical harm.

OSHA lacks: (1) a methodology to determine when complainants and witnesses should be interviewed and the appropriate amount of their involvement, (2) a process for documenting supervisory reviews

and decision approvals within case files, and (3) controls to ensure enforcement of abatement deadlines for employers. As a result, OSHA may have conducted incomplete inspections and workers may have been exposed to hazardous working conditions for an extended period of time.

The Firm made three recommendations to OSHA to strengthen the agency's processes to ensure it adequately addresses complaints and referrals.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/02-23-001-10-105.pdf>, Report No. 02-23-001-10-105 (March 6, 2023).

## Philadelphia Contractor Sentenced to Prison for Bribing OSHA Inspector

On November 1, 2022, Tony Ren, owner of Hua Da Construction, was sentenced to 3 months in prison and was ordered to pay approximately \$50,000 in fines following a conviction at trial of bribing a public official from OSHA.

In October 2017, an OSHA official conducted an inspection of a Hua Da Construction worksite in Philadelphia, Pennsylvania, in response to an imminent hazard report. During the inspection, an official observed numerous violations of OSHA standards including debris in passageways, electrical issues, holes in the floor, and gas tanks with broken pressure gauges. On two separate dates in November 2017, Ren offered cash bribes to an OSHA official in exchange for the official falsifying the inspection results, deleting previous violations from OSHA's computer system, and agreeing not to report the violations so that Ren could avoid the substantial financial penalties that would follow.

This is a joint investigation with OSHA. *United States v. Ren* (E.D. Pennsylvania)





# Employment and Training Programs



# Foreign Labor Certification Programs

*ETA administers a number of foreign labor certification (FLC) programs that allow U.S. employers to employ foreign workers to meet domestic worker shortages: PERM, CW-1, H-1B, H-2A, and H-2B. The PERM program allows an employer to hire foreign nationals to work in the United States on a permanent basis while the CW-1, H-1B, H-2A, and H-2B programs are for temporary employment in the United States. The CW-1 program allows employers to hire workers on a temporary basis in the Commonwealth of the Northern Mariana Islands. The H-1B program allows employers to hire foreign workers on a temporary basis in specialty occupations or as fashion models. The H-2A program allows employers to hire foreign workers for temporary agricultural jobs, in contrast to the H-2B program, which is for temporary non agricultural jobs. ETA ensures the admission of foreign workers into the United States on a PERM, CW-1, H-2A, or H-2B visa will not adversely affect job opportunities, wages, and working conditions of U.S. workers. The OIG also investigates labor trafficking cases that involve fraud against FLC programs.*

## Florida Man Sentenced to 118 Months in Prison for his Role in Racketeering Conspiracy Involving Forced Labor

On December 28, 2022, Bladimir Moreno was sentenced for his role in leading a federal racketeering and forced labor conspiracy that victimized Mexican agricultural workers admitted to the United States under the H-2A temporary visa program. He was sentenced to 118 months in prison and was ordered to pay restitution of more than \$170,000 to the victims.

Moreno was the owner and manager of Los Villatoros Harvesting, a labor contracting company that employed Mexican H-2A workers to harvest fruits and vegetables in the States of Florida, Kentucky, Indiana, Georgia, and North Carolina. Through his business, he conspired with others to commit racketeering offenses, including subjecting H-2A workers to forced labor, harboring, visa fraud, and fraud in foreign

labor contracting. Moreno and his co-conspirators used coercive means to obtain thousands of hours of physically demanding agricultural labor from victimized H-2A workers, all for less pay than required by law. The coercive means used included confiscating the workers' passports; subjecting the workers to crowded, unsanitary, and degrading living conditions; isolating the workers; limiting their ability to interact with anyone other than Los Villatoros Harvesting employees; and subjecting workers to debt manipulation. In order to conceal aspects of the criminal enterprise, he provided false statements and information to federal investigators and directed his employees to do the same.

This is a joint investigation with the Palm Beach County Human Trafficking Task Force (including the FBI, Homeland Security Investigations, and the Palm Beach County Sheriff's Office) and the Diplomatic Security Service. *United States v. Bladimir Moreno* (M.D. Florida)

## Employment and Training Programs



### Illinois Resident Pleads Guilty to Forced Labor of Two Minor Children

On November 10, 2022, Santos Ac-Salazar pled guilty to two counts of forced labor for his involvement in the labor trafficking of two minor children. Ac-Salazar, along with a co-conspirator, devised a scheme to unlawfully enter the United States with minor children. Ac-Salazar and a co-conspirator, both of whom are Guatemalan citizens, coordinated with smugglers and third parties to locate two minors in Guatemala and used those children to facilitate their entry into the United States.

Additionally, Ac-Salazar and the co-conspirator obtained fraudulent identity documents for one of the minors, falsely representing the minor to be an adult. The minor was made to work at businesses and as a domestic servant from 2019 through 2020. The other minor worked as a domestic servant as well from 2019 to 2020. Ac-Salazar and

the co-conspirator did not pay the minors for their domestic work, nor did they permit them to attend school or leave the residence. Instead, they made the children work extended hours under the threat of physical harm if they did not comply.

This is a joint investigation with the FBI and Homeland Security Investigations. *United States v. Ac-Salazar* (N.D. Illinois)

### Wisconsin Businessman Pled Guilty to Making False Statements Concerning Employment of H-2B Workers

On January 13, 2023, Alfredo Aguilar pled guilty to a conspiracy involving false, material statements made to DOL and U.S. Citizenship and Immigration Services concerning H-2B workers hired to perform forestry work in the United States.

Aguilar co-owned and operated Northwoods Forestry located in Elewa, Wisconsin. Between December 2016 and June 2018, he and co-conspirators made false statements under oath and attestations representing that individuals recruited as H-2B visa workers would be employed in the forestry industry in the States of Maine and New Hampshire. Aguilar placed H-2B workers with non-forestry employers, including meat packing, construction, roofing, agriculture, painting, fur processing, and landscaping businesses. The investigation revealed that the H-2B workers' pay was improperly garnished for travel, subsistence, and equipment costs. Additionally, the H-2B workers were not paid the correct prevailing wage for the occupations in which they worked and their hours and hourly rate reported to the DOL were manipulated.

This is a joint investigation with the Wage and Hour Division and the Diplomatic Security Service. *United States v. Alfredo Aguilar* (W.D. Wisconsin)





# Labor Racketeering

# Labor Racketeering

*Under the Inspector General Act of 1978, as amended, the OIG is responsible for investigating labor racketeering and the influence of organized criminal enterprises involving unions, employee benefit plans, and labor-management relations.*

*Labor racketeering refers to the infiltration, exploitation, or control of a union, employee benefit plan, employer entity, or workforce, carried out through illegal, violent, or fraudulent means. OIG labor racketeering investigations focus largely on individuals and organized criminal enterprises engaged in embezzlement, extortion, violence against union members or employers, and other related criminal activities.*

*Our investigations continue to identify fraudulent payments from employers to union representatives in order to gain favorable labor agreements for the employer. Our investigations have also identified complex financial and investment schemes used to defraud union affiliated benefit plans, resulting in millions of dollars in losses to plan participants.*

## California Woman Sentenced to 6 Years in Prison for Defrauding Health Insurers by Submitting Claims for Botox Injections

On October 14, 2022, Roshanak Khadem, owner of R&R Med Spa and Nu-Me Aesthetic and Anti-Aging Center, was sentenced to 72 months for conspiring to defraud health insurance plans, including the International Longshore and Warehouse Union - Pacific Maritime Association Benefit Plan, by causing millions of dollars in fraudulent claims to be submitted to provide patients with “free” cosmetic procedures, including Botox injections.

From January 2012 to April 2016, Khadem and her co-conspirators induced patients to visit her clinics to receive free cosmetic procedures, including facials, laser hair removal, and Botox injections, which were not covered by insurance plans. Khadem and her co-conspirators obtained insurance information from the patients and fraudulently billed insurance companies for unnecessary medical services or for services that were never provided. Using the fraudulent proceeds from the insurance

plans, the defendants calculated a “credit” that patients could use to receive “free” or discounted cosmetic procedures. In total, the health insurance plans paid at least \$1.3 million related to the fraudulent claims submitted by Khadem and her co-conspirators. As part of her sentence, Khadem is required to pay more than \$1.2 million in restitution and \$30,000 in fines.

This is a joint investigation with EBSA and the U.S. Office of Personnel Management OIG. *United States v. Roshanak Khadem* (C.D. California)

## Owner of Connecticut Insurance Firm Pled Guilty in \$40 Million Scheme to Steal Client Health Care Funds and Defraud Lenders

On February 21, 2023, Anthony Riccardi pled guilty to conspiracy to commit wire fraud and bank fraud for a widespread scheme to misappropriate and steal client health care funds and defraud multiple lenders. In connection with the guilty plea, he agreed to pay more than \$14.8 million in restitution and to forfeit \$2 million.



## Labor Racketeering

From at least 2015 and continuing through 2019, Riccardi was a co-owner and Executive Vice President of Employee Benefit Solutions, which, among other things, provided third-party health care claims administration services to clients that elected to self-fund their employee health care plans.

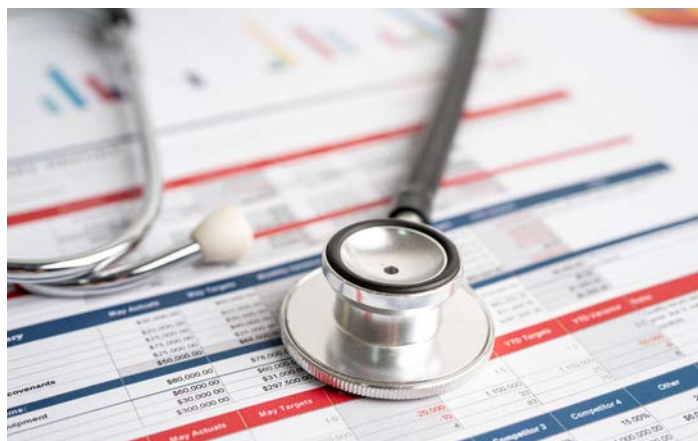
Between at least 2015 and continuing through 2019, Employee Benefit Solutions served as third-party health care claims administration for the company's self-funded employee health care program and generated bi monthly invoices purportedly for health care expenses. During this time, the company transferred approximately \$26 million to Employee Benefit Solutions for the payment of health care claims. However, much of this money was never sent to pay the claims. Instead, approximately \$17.87 million was misappropriated, most of which was used to pay expenses incurred by Employee Benefit Solutions or its managers, including home mortgage expenses and personal credit card charges relating to boating, luxury cars, and golf.

Additionally, in mid-2017, Riccardi and his co-conspirators began fraudulently applying for and receiving millions of dollars in loans under the auspices of financing the purchase of billing software for Employee Benefit Solutions.

This is a joint investigation with EBSA, U.S. Postal Inspection Service, and the Secret Service. *United States v. Anthony Riccardi, et al.* (S.D. New York)

### **Former Union Leadership Sentenced for Union Book Selling Scheme**

On October 4, 2022, John DeFalco was sentenced for his role in a union book selling scheme. DeFalco is the former Vice President of Local 157 of the United Brotherhood of Carpenters and Joiners of



America. DeFalco was sentenced to time served, as well as 36 months supervised release, and ordered to pay more than \$148,000 in restitution.

From 2017 through June 2019, DeFalco and his co-conspirator, former United Brotherhood of Carpenters and Joiners of America Local 926 President Sal Tagliaferro, abused their positions as union officers of the United Brotherhood of Carpenters and Joiners of America by soliciting and accepting cash bribes from prospective union members in exchange for securing the bribe payers' admission to the union. Once prospective members made the payments, Tagliaferro used his authority as president of Local 926 to ensure they were accepted into Local 926 and received union membership cards even though many such bribe payers did not have union jobs and were not eligible for admission into the union. Hundreds of new members were admitted to Local 926 as a result of this scheme. DeFalco and Tagliaferro shared the bribe payments and made at least \$70,000 from the scheme. Tagliaferro was previously sentenced for his role in this scheme.

This is a joint investigation with the Office of Labor-Management Standards and the New York City Department of Investigation. *United States v. Tagliaferro* (S.D. New York)





# Departmental Management

# Departmental Management

*The OIG performs oversight work involving the Department's operations, financial management, and IT services.*

## FINANCIAL

### FY 2022 Independent Auditor's Report on the DOL Financial Statements

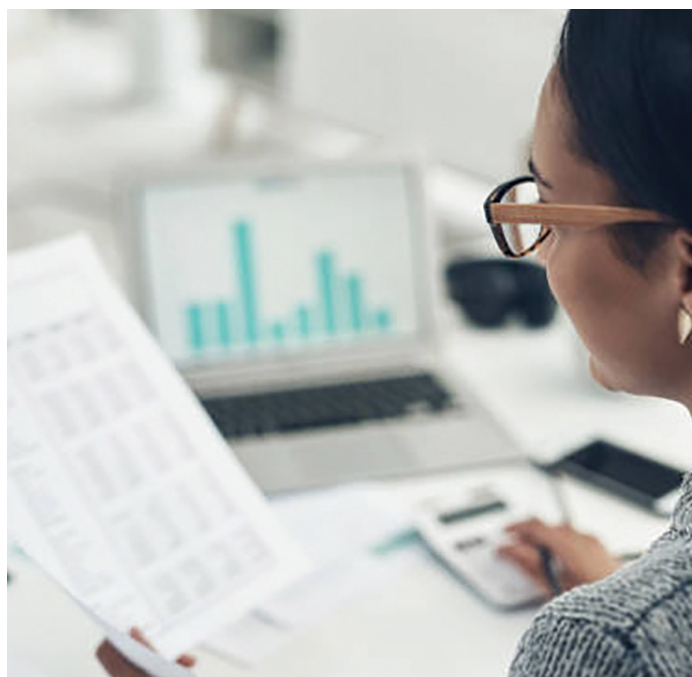
The OIG contracted with the independent certified public accounting firm of KPMG LLP (KPMG) to audit DOL's annual financial statements, which comprise the consolidated financial statements and sustainability financial statements, as of and for the fiscal year ended September 30, 2022. KPMG concluded that DOL complied, in all material respects, with the requirements of the Federal Financial Management Improvement Act of 1996 as of September 30, 2022. However, KPMG issued a modified opinion on the consolidated financial statements and identified one material weakness on internal control over financial reporting.

KPMG found the consolidated financial statements presented fairly, except for the matter described in its basis for qualification, in all material respects for the year ended September 30, 2022. Also, KPMG found the sustainability financial statements presented fairly, in all material respects, DOL's social insurance<sup>137</sup> information as of September 30, 2022, 2021, 2020, 2019, and 2018, and its changes in social insurance amounts for the years ended September 30, 2022, and

<sup>137</sup> Social insurance is defined as income transfer programs financed by compulsory earmarked taxes. DOL operates the Black Lung Benefits program, which is classified as a social insurance program and is reported in its sustainability financial statements.

2021, in accordance with U.S. generally accepted accounting principles.

KPMG's opinion on DOL's consolidated financial statements is modified, and the opinion on the sustainability financial statements is unmodified. KPMG issued a modified opinion because it was unable to obtain sufficient appropriate audit evidence about the methodology and underlying assumptions used to estimate certain unemployment insurance balances in FY 2022.



In addition, KPMG identified certain deficiencies in internal control that they considered to be a material weakness and determined improvements were needed in controls over financial reporting related to unemployment trust fund balances and activity. To address these deficiencies, KPMG provided three recommendations to the Assistant Secretary

## Departmental Management

for Employment and Training and the Deputy Chief Financial Officer. Management agreed with the recommendations and indicated actions have already been taken to improve policies and procedures for internal control.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/22-23-002-13-001.pdf>, Report No. 22-23-002-13-001 (December 13, 2022).

### **Management Advisory Comments Identified in an Audit of the Consolidated Financial Statements for the Year Ended September 30, 2022**

In a separate Management Advisory Comments report, KPMG provided additional information to DOL management on issues identified during the OIG-contracted financial statement audit that did not rise to the level of significant deficiencies. The additional information represented opportunities for DOL to improve internal controls or achieve other operating efficiencies. KPMG identified three new comments and five prior-year comments still present in FY 2022 and noted the resolution of four prior-year comments closed in FY 2022.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/22-23-005-13-001.pdf>, Report No. 22-23-005-13-001 (January 30, 2023).

### **Special Report Relating to the Federal Employees' Compensation Act Special Benefit Fund**

The OIG contracted with KPMG to audit the FECA Special Benefit Fund's Schedule of Actuarial Liability, Net Intra-governmental Accounts Receivable, and Benefit Expense Fund as of, and for the year ended, September 30, 2022.

KPMG issued an unmodified opinion, meaning the schedule was presented fairly in all material respects and in conformity with U.S. generally accepted accounting principles. KPMG also performed certain tests of controls and compliance with laws and regulations related to the fund. Its testing of controls found no deficiencies in internal control over financial reporting that it considered to be significant deficiencies and/or material weaknesses. KPMG also performed agreed-upon procedures and identified certain differences as a result of performing the procedures over the actuarial liability and the benefit expense.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/22-23-001-04-431.pdf>, Report No. 22-23-001-04-431 (November 3, 2022).

### **District of Columbia Workmen's Compensation Act Special Fund Financial Statements and Independent Auditors' Report**

The District of Columbia Workmen's Compensation Act of 1928 Special Fund (DCCA Special Fund) provides medical benefits, compensation for lost wages, and rehabilitation services for job-related injuries, diseases, or death of certain private-sector workers in the District of Columbia. The DCCA Special Fund also extends benefits to dependents if any injury resulted in the employee's death. The OIG contracted with KPMG to audit the financial statements of the DCCA Special Fund as of September 30, 2021. KPMG issued an unmodified opinion, meaning the financial statements presented fairly, in all material respects, the financial position of the DCCA Special Fund, and its net costs, changes in net position, and budgetary resources for the years then ended in accordance with U.S. generally accepted accounting principles.



## Departmental Management

As part of its audit, KPMG also considered the DCCA Special Fund's internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the DCCA Special Fund's internal control over financial reporting nor to identify all deficiencies that might be material weaknesses or significant deficiencies. While KPMG did not identify any deficiencies in internal control over financial reporting that it considered to be material weaknesses, it did identify certain deficiencies in internal control over financial reporting that it considered to be a significant deficiency. These deficiencies include instances where the claims examiners' reviews were not performed in accordance with the relevant procedure manual and also instances in which the claims examiner did not complete timely follow-up procedures or suspend benefits in accordance with the procedure manual. As part of obtaining reasonable assurance, KPMG also performed certain tests of the DCCA Special Fund's compliance with applicable laws and regulations, and its test results disclosed no instances of noncompliance or other matters required to be reported under government auditing standards.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/22-23-004-04-432.pdf>, Report No. 22-23-004-04-432 (February 22, 2023).

### **Longshore and Harbor Workers' Compensation Act Special Fund Financial Statements and Independent Auditors' Report**

The Longshore and Harbor Workers' Compensation Act Special Fund (Longshore Special Fund) provides medical benefits,

compensation for lost wages, and rehabilitation services for job-related injuries and diseases sustained by private-sector workers in certain maritime and related employment. The Longshore Special Fund also extends benefits to dependents if any injury results in the worker's death. The OIG contracted with KPMG to audit the financial statements of the Longshore Special Fund as of September 30, 2021. KPMG issued an unmodified opinion, meaning the financial statements presented fairly, in all material respects, the financial position of the Longshore Special Fund, and its net costs, changes in net position, and budgetary resources for the years then ended in accordance with U.S. generally accepted accounting principles.

As part of its audit, KPMG also considered the Longshore Special Fund's internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Longshore Special Fund's internal control over financial reporting nor to identify all deficiencies that might be material weaknesses or significant deficiencies. Given this limitation, KPMG did not identify any deficiencies in internal control over financial reporting that it would consider to be material weaknesses or significant deficiencies. As part of obtaining reasonable assurance, KPMG also performed certain tests of the Longshore Special Fund's compliance with applicable laws and regulations and its test results disclosed no instances of noncompliance or other matters required to be reported under government auditing standards.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/22-23-003-04-432.pdf>, Report No. 22-23-003-04-432 (February 22, 2023).

# Departmental Management

## INFORMATION TECHNOLOGY

### FY 2022 FISMA DOL Information Security Report: DOL’s Information Security Program Not Remaining Current with Security Requirements

Under the Federal Information Security Modernization Act of 2014 (FISMA), the OIG is required to perform annual independent evaluations of the Department’s information security program and practices. We contracted with KPMG to conduct an independent audit of DOL’s FY 2022 information security program. The objective of this audit was to determine if DOL implemented an effective information security program for the period October 1, 2021, through June 30, 2022. KPMG determined DOL’s information security program was not effective for FY 2022.

KPMG reported nine findings for DOL’s information security program. The findings were identified in all five of the FISMA Cybersecurity Framework Functions and in six of the nine FISMA Metric Domains. A security program is considered effective if the majority of the FY 2022 Core Inspector

General Metrics reported in CyberScope<sup>138</sup> are at least Managed and Measurable (Level 4). However, KPMG found weaknesses that demonstrated the information security program had not achieved a maturity rating of Managed and Measurable (Level 4) in four of the five FISMA Cybersecurity Framework Functions: Identify, Protect, Detect, and Recover (see Table 4).

KPMG also found DOL’s information security program did not fully adhere to applicable FISMA requirements, OMB policy and guidance, and NIST standards and guidelines. Further deficiencies were noted in the performance of security control assessments, account management controls, and contingency planning controls.

In reviewing the results from KPMG’s testing, we are concerned DOL’s entity-wide and system-level security policies and procedures have not been updated to comply with NIST Special Publication 800-53, Revision 5, *Security and Privacy Controls*

<sup>138</sup> CyberScope, operated by the U.S. Department of Homeland Security on behalf of OMB, is a web based application designed to streamline IT security reporting for federal agencies.

**Table 4: Maturity Levels for Cybersecurity Framework Functions**

Cybersecurity Framework Functions	Maturity Level
Identify – Risk Management and Supply Chain Risk Management	Consistently Implemented (Level 3)
Protect – Configuration Management, Identity and Access Management, Data Protection and Privacy, and Security Training	Consistently Implemented (Level 3)
Detect – Information Security Continuous Monitoring	Defined (Level 2)
Respond – Incident Response	Managed and Measurable (Level 4)
Recover – Contingency Planning	Consistently Implemented (Level 3)

Source: FY 2022 FISMA Metrics

## Departmental Management

for Information System and Organization (NIST SP 800-53, Rev. 5). The CIO's inability to bring DOL into compliance with NIST SP 800-53, Rev. 5, controls impact all areas of DOL's information security program, including all metric areas, and was a cause for the decline in scores from FY 2021. The significant delay<sup>139</sup> in implementation heightens our concerns about this issue given the CIO has not documented the risk nor has the CIO accepted the risk of DOL information security controls not being compliant with NIST SP 800-53, Rev. 5. With so many control areas at risk, the confidentiality, integrity, and availability of DOL's systems are at risk.

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<sup>139</sup> The implementation of NIST SP 800-53, Rev. 5, was due to be completed for new systems by October 1, 2020 and for existing systems a year later, by October 1, 2021. DOL currently aims to have these controls in place by June 30, 2023.

KPMG made eight recommendations related to control deficiencies within DOL's information security program and cited open prior-year recommendations that correspond to recurring findings for FY 2022. To improve and progress the maturity of the information security program, the CIO should apply these recommendations at the enterprise level.

We reviewed the Office of the CIO's management comments on the findings and our concerns, as well as KPMG's response, and we noted that the Office of the CIO did not provide additional evidence. Therefore, based on our oversight of KPMG's work during the audit, we determined the results remain factually correct and fully supported.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/23-23-001-07-725.pdf>, Report No. 23-23-001-07-725 (February 10, 2023).

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## Single Audits

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*A single audit provides an organization-wide examination of an entity expending federal assistance funds received for its operations. The audit is typically conducted annually by an independent certified public accountant, and its objective is to provide assurance to the U.S. government regarding the management and use of funds by recipients such as states, schools, universities, and nonprofits.*

### Quality Control Review of Single Audits

Under Uniform Guidance,<sup>140</sup> cognizant and oversight federal agencies ensure the implementation of single audit requirements. A non-federal entity expending more than \$50 million a year in federal awards has a cognizant agency for audit while

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<sup>140</sup> Uniform Guidance refers to 2 Code of Federal Regulations Part 200, OMB's "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

a non federal entity expending \$50 million and less annually has an oversight agency.<sup>141</sup> DOL is currently cognizant for 6 entities and oversight for 25 entities.

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<sup>141</sup> According to Uniform Guidance, the designated cognizant agency for audit must be the federal awarding agency that provides the predominant amount of funding directly...to a non-federal entity unless OMB designates a specific cognizant agency for audit. Cognizant agencies for audit are the federal agencies designated to carry out the responsibilities described in Uniform Guidance §200.513.

## Departmental Management

The OIG periodically performs quality control reviews of the cognizant and oversight entities' single audits. During this reporting period, we conducted two quality control reviews: (1) as the oversight agency for the Single Audit of Service, Employment, and Redevelopment Jobs for Progress National, Inc. for the Year Ended June 30, 2022; and (2) as the cognizant agency for the Single Audit of the State of New Mexico Workforce Solutions Department for the Year Ended June 30, 2021.

### **Quality Control Review Single Audit of Service, Employment, and Redevelopment Jobs for Progress National, Inc. for the Year Ended June 30, 2022**

The single audit conducted by Garza/Gonzalez & Associates covered the following DOL major programs: Senior Community Service Employment program and National Farmworker Jobs program, totaling \$24,841,045 in expenditures. We determined that, while the report and audit work performed on Quality Control Review Single Audit of Service, Employment, and Redevelopment Jobs for Progress National, Inc. for the Year Ended June 30, 2022, generally met the requirements of government auditing standards, generally accepted auditing standards, and OMB Uniform Guidance, Garza/Gonzalez & Associates reported the Type A/B threshold incorrectly to the Federal Audit Clearinghouse. This threshold is used to determine the major programs to be audited. However, our review of the audit work found Garza/Gonzales & Associates had applied the correct threshold in its testing procedures. We have discussed this matter with Garza/Gonzales & Associates, and they have already taken corrective actions.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/24-23-002-50-598.pdf>, Report No. 24-23-002-50-598 (March 30, 2023).

### **Quality Control Review for the Single Audit of State of New Mexico Workforce Solutions Department for the Year Ended June 30, 2021**

The single audit conducted by Moss Adams LLP covered the following DOL major programs: COVID-19 unemployment insurance, unemployment insurance, and Workforce Innovation and Opportunity Act, totaling \$2,635,785,288 in expenditures. We determined Moss Adams LLP's audit work on the Single Audit of the New Mexico Workforce Solutions Department for the Year Ended June 30, 2021, generally met the requirements of government auditing standards, generally accepted auditing standards, and OMB Uniform Guidance. However, Moss Adams LLP's testing could be improved. Specifically, audit documentation provided by Moss Adams LLP in the electronic working paper file did not contain sufficient information on the attributes tested for the Activities Allowed or Unallowed compliance requirement. We also noted that Moss Adams LLP did not conduct internal control and compliance testing of the Workforce Innovation and Opportunity Act cluster subrecipients' financial and performance reporting as required.

For more information, go to <https://www.oig.dol.gov/public/reports/oa/2023/24-23-001-50-598.pdf>, Report No. 24-23-001-50-598 (March 7, 2023).







# Employee Integrity Investigations

# Employee Integrity Investigations

*The OIG is responsible for investigating possible misconduct or criminal activities involving senior DOL employees or individuals providing services to the Department.*

### SUBSTANTIATED

#### **Federal Safety and Health Officer Admits Conspiring with His Brother to Extort Contractors**

On October 12, 2022, Alvaro Idrovo pled guilty to an information charging him with one count of conspiring to defraud the United States and to commit an offense against the United States, specifically, an act of extortion through his employment with OSHA.

Idrovo was a Compliance Safety and Health Officer for OSHA when he misrepresented to contractors at construction sites in the State of New Jersey that they were facing significant OSHA fines, penalties, and possibly jail if they did not get allegedly necessary OSHA safety training. Idrovo provided contractors with the phone number for a required trainer. Idrovo's brother, Paul, posed as the required OSHA trainer using false names. He provided contractors with fraudulent computer-generated safety and health certificates, when, in fact, no training had been provided. The two men charged contractors between \$4,000 and \$6,000 each in cash for the alleged safety training. Paul Idrovo was previously sentenced for his role in the fraud scheme.

This is a joint investigation with the FBI. *United States v. Idrovo* (D. New Jersey)

#### **DOL Special Agent Pled Guilty to UI Fraud Scheme**

A DOL Special Agent, Thomas Hartley, pled guilty to the charge of mail fraud in connection with multiple schemes to commit fraud.

Between April 2020 and September 2021, Hartley applied for and collected Pennsylvania unemployment compensation benefits by claiming he was unemployed, when, in fact, he was employed on full-time active duty with the New Jersey National Guard. When he applied for unemployment benefits, Hartley failed to disclose that he was on military leave from his full-time federal civilian employment with the DOL. He thereby utilized the mail to collect approximately \$60,284 in unemployment compensation funds to which he was not entitled. Hartley's plea encompassed a total of \$197,366 in fraud including the collection of \$23,582 in Basic Allowance for Housing funds from the Army, \$50,000 in "lost wage" benefits paid by the United Services Automobile Association (USAA) insurance, and \$63,500 from his Thrift Savings Plan account.

This investigation was conducted by the DOL-OIG, Office of Special Investigations, the Army CID, and the USAA Insurance Special Investigations Unit. *United States v. Thomas Hartley* (M.D. Pennsylvania)

# Employee Integrity Investigations

## UNSUBSTANTIATED

### Results of Review of Allegations of Ethics Violations by the Secretary of Labor

The OIG initiated a review after receiving two letters from Congress questioning whether: (1) the Secretary of Labor's participation in certain labor dispute activities violated the Standards of Ethical Conduct for Employees of the Executive Branch; and (2) if he should in the future recuse himself from involvement with the parties involved in those labor disputes should they come before the Department.

On October 27, 2021, Secretary Walsh visited a union picket line, and, on December 17, 2021, he served as a mediator of a labor dispute in his personal capacity. After conducting a thorough review of the facts and the totality of the circumstances involving these events, the OIG found no evidence that the Secretary exceeded his

authority as Secretary of Labor or that he violated applicable ethics regulations.

As Secretary of Labor, Secretary Walsh had implicit statutory authority to intervene and become involved in labor disputes. The Standards of Ethical Conduct for Employees of the Executive Branch provisions requiring impartiality were not violated because Secretary Walsh did not have any financial interests or pre-existing personal or business relationships with the parties involved in these engagements. Moreover, his personal involvement as mediator of a labor dispute in his personal capacity did not violate applicable ethics regulations.

Finally, it is the Solicitor of Labor's role as Designated Agency Ethics Official to advise the Secretary and other DOL officials on ethics regulations and to evaluate future actual or apparent potential conflicts. The OIG provided its findings to the Solicitor of Labor for her review and any action deemed appropriate.





# **OIG Whistleblower Activities**



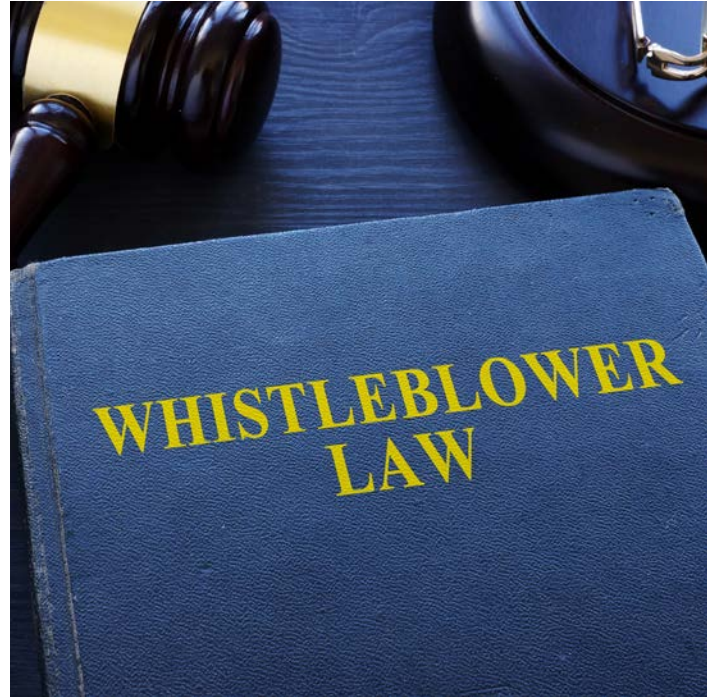
# OIG Whistleblower Activities

## WHISTLEBLOWER PROTECTION COORDINATOR

DOL employees, contractors, subcontractors, and grantees perform an important service by reporting evidence of wrongdoing, including misconduct, fraud, waste, and abuse, in DOL programs. Whistleblowers should never be subjected to, or threatened with, retaliation for having engaged in a protected communication or protected activity. The OIG plays a vital role in ensuring that DOL employees and employees of DOL grantees and contractors are informed of their rights and protections against retaliation for “blowing the whistle.” This work is done by the OIG Whistleblower Protection Coordinator Program, housed in the OIG’s Office of Legal Services.

Pursuant to Section 2 of the Whistleblower Protection Coordination Act of 2018 (Section 2), every Inspector General’s office is required to designate a Whistleblower Protection Coordinator. According to Section 2, the Whistleblower Protection Coordinator:

1. educates agency employees about prohibitions against retaliation for protected disclosures;
2. educates agency employees who have made or are contemplating making a protected disclosure about their rights and the remedies against retaliation for protected disclosures, including the means by which employees may seek review of any allegation of reprisal, as well as about the roles of the OIG, the Office of Special Counsel, the Merit Systems Protection Board, and any other relevant entities; and



3. provides general information about the timeliness of such cases, the availability of any alternative dispute mechanisms, and avenues for potential relief. Within the OIG, an Associate Counsel to the Inspector General has been designated to serve as the Whistleblower Protection Coordinator. Pursuant to this designation, the Whistleblower Protection Coordinator has:
  - provided input into training that is required to be completed by all DOL employees, entitled “Prohibited Personnel Practices, Whistleblower Protection”;
  - provided input into training that is required to be completed by all DOL supervisors and managers entitled “Responding to Whistleblower Retaliation Complaints/ Overview of Prohibited Personnel Practices – Annual Training”;

## OIG Whistleblower Activities

- developed training for new employees titled “Whistleblower Rights and Protections for DOL Employees” that is included in all DOL employees’ New Employee Orientation and regularly provides this training live to Solicitor’s Office’s Honors Attorneys;
- updated the DOL OIG public-facing website titled “Whistleblower Protection Coordinator,” which is available to all DOL and OIG employees, to provide information on whistleblower protections and options for DOL employees and employees of DOL contractors and grantees;
- provided live training to all OIG employees on “Whistleblower Rights and Protections for OIG Employees”;
- established a dedicated e-mail address—OIGWhistleblower@oig.dol.gov—to receive and respond to whistleblower-related inquiries from DOL employees;
- obtained the OIG’s recertification of its 2302(c) program (June 2020); and
- monitored whistleblower retaliation complaints received by the OIG as well as whistleblower retaliation investigations conducted by the OIG.

### Whistleblower Retaliation Investigations

The OIG can initiate its own investigations into allegations of improper or illegal retaliation brought by DOL employees or, on a discretionary basis, refer such allegations to the Office of Special Counsel for review and investigation.

Further, pursuant to 41 U.S.C. § 4712, the OIG is required, with some exceptions, to investigate whistleblower retaliation allegations made by employees of DOL contractors or grantees. See Table 5 for summary of whistleblower investigations during the reporting period.

**Table 5: Whistleblower Investigations, October 1, 2022–March 31, 2023**

Investigation Type	Number
Pending DOL employee complaint investigations	6
Reports related to DOL employee whistleblower retaliation complaints sent to the appropriate agencies within the Department	0
Grantee/contractor employee complaints closed after preliminary inquiry	1
Pending grantee/contractor employee complaint investigations	3
Reports pending with DOL	1
Decision issued by DOL’s Office of Assistant Secretary for Administration and Management	1





# OIG Congressional Testimony

## OIG Congressional Testimony

*During this semiannual reporting period, the OIG testified before two congressional committees. The full text of our testimonies is available on our website at: <https://www.oig.dol.gov/testimony.htm>.*

March 9, 2023 – Larry D. Turner, Inspector General, U.S. Department of Labor, testified before the U.S. House of Representatives Committee on Oversight and Accountability, Subcommittee on Government Operations and the Federal Workforce. The hearing was titled, “Waste, Fraud, and Abuse Go Viral: Inspectors General on Curing the Disease.”<sup>142</sup>

February 8, 2023 – Larry D. Turner, Inspector General, U.S. Department of Labor, testified before the U.S. House of Representatives Committee on Ways and Means. The hearing was titled, “The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud.”<sup>143</sup>



Source: U.S. House of Representatives Committee on Oversight and Accountability

<sup>142</sup> Written Statement of Larry D. Turner, Inspector General, U.S. Department of Labor, before the House Committee on Oversight and Accountability, Subcommittee on Government Operations and the Federal Workforce on March 9, 2023, available at <https://www.oig.dol.gov/public/testimony/03092023.pdf>

<sup>143</sup> Written Statement of Larry D. Turner, Inspector General, U.S. Department of Labor, before the House Committee on Ways and Means on February 8, 2023, available at <https://www.oig.dol.gov/public/testimony/02082023.pdf>





# Legislative Recommendations

# Legislative Recommendations

*The Inspector General Act of 1978, as amended, requires the Office of Inspector General (OIG) to review existing or proposed legislation and regulations and to make recommendations in the Semiannual Report to Congress concerning their impact both on the economy and efficiency of the Department's programs and on the prevention of fraud, waste, and abuse. The OIG continues to propose the following legislative actions to increase efficiency and protect the U.S. Department of Labor's (DOL or Department) programs.*

In recent Congressional testimonies, Inspector General Larry D. Turner highlighted three high-priority recommendations for Congressional consideration:

1. Ensure DOL and the OIG have ongoing, timely, and complete access to UI claimant data and wage records;
2. Extend the statute of limitations for fraud involving pandemic-related UI programs; and
3. Ensure effective payment integrity controls to reduce improper payments in all UI programs including temporary ones, such as broader requirements for mandatory cross-matching.

Details on these and other legislative recommendations follow.

### **Allow DOL and the OIG Access to Unemployment Insurance Claimant Data and Wage Records**

Congress should consider legislative action to ensure DOL and the OIG have ongoing, timely, and complete access to State Workforce Agencies' (SWA) unemployment insurance (UI) claimant data and wage records for our respective oversight responsibilities.

The Department has stated that, outside of the temporary authority provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent pandemic-related legislation, it lacks the

authority to require SWAs to provide the OIG with access to UI claimant data and wage records except when the OIG is conducting an investigation into a particular instance of suspected UI fraud.

The Inspector General Act of 1978, as amended, authorizes the Inspector General's access to information related to the Department's programs and operations, unless Congress enacts a law that expressly refers to the Inspector General and limits the Inspector General's right of access. The Department has not provided the OIG with a federal statute that limits the Inspector General's access in this manner. Furthermore, in a June 2021 alert memorandum,<sup>144</sup> the OIG recommended that the Employment and Training Administration (ETA) amend its regulations through rulemaking to reinforce that UI information must be provided to the OIG for all Inspector General engagements.

This lack of ongoing, timely, and complete access to data has severely hampered the OIG's ability

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<sup>144</sup> Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General, Report No. 19-21-005-03-315 (June 16, 2021), available at: <https://www.oig.dol.gov/public/reports/oa/2021/19-21-005-03-315.pdf>

## Legislative Recommendations

to oversee the UI program. To overcome this and effectively oversee UI benefits provided in response to the pandemic, the OIG issued multiple Inspector General subpoenas to all SWAs, seeking UI claimant data. OIG data scientists then had to ensure the data was complete, consistent, and in a common format to analyze and identify potential fraud and programmatic weaknesses. The repeated use of Inspector General subpoenas to obtain UI data on a recurring basis is time-consuming and inefficient. Ongoing, timely, and complete access for all OIG engagements would alleviate that time and resource burden and align with the Inspector General Act of 1978, as amended.

While the OIG and ETA agree that changing regulations requires notice and comment rulemaking, an immediate and legally sound interim solution is available to ETA. In the alert memorandum issued September 21, 2022,<sup>145</sup> the OIG highlighted DOL's authority to amend its interpretation of its regulations without changing the regulations themselves. ETA could immediately amend its interpretation of its regulations to be consistent with the Inspector General Act of 1978, as amended. Specifically, ETA can issue guidance to inform SWAs that they must timely provide UI data to the OIG for audits and investigations without any constraints consistent with the Inspector General Act of 1978, as amended. The historic levels of improper payments that the OIG has identified, including potential fraud, support the conclusion that the OIG's continued access to state UI data is imperative.

In support of the OIG's oversight activities, the OIG needs access to UI claimant data and wage

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<sup>145</sup> Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>



records from SWAs to verify claimants' eligibility for UI benefits, including both initial eligibility (and amounts) and continuing eligibility. Timely access to these records will facilitate the OIG's efforts to quickly identify claimants who are part of large-scale fraud schemes or are receiving benefits improperly due to systemic program weaknesses. Further, timely access to UI data will allow the OIG to use our data analytics program to identify and investigate complex identity theft and multistate fraud schemes as we have successfully done during the pandemic. The OIG could also use those records to assess program outcomes for UI reemployment programs, as well as other training programs, such as YouthBuild and Job Corps, where employment and wage increases are important factors in determining a program's success.

To date, ETA has implemented only temporary solutions. In August 2021, ETA issued guidance requiring SWAs to disclose UI data to the OIG for audits and investigations for the duration of the pandemic programs. ETA also awarded fraud prevention grants to states conditioned on requiring OIG access to their UI data for investigative and audit purposes through December 31, 2025.

## Legislative Recommendations

Contrary to DOL's interpretation of its regulations, ETA stated it was able to require SWAs to provide UI data to the OIG due to temporary authority created by the CARES Act and subsequent pandemic-related legislation.

ETA's actions are not sufficient to resolve the OIG's recommendations or concerns. Unless DOL implements a permanent solution ensuring the OIG's complete and timely access to UI program data and information by the end of 2025, the Department's interpretation of its regulations will renew impediments to the OIG's access experienced prior to and during the pandemic and may necessitate additional subpoenas.



To aid in resolving this issue, we previously requested that Congress consider legislative action to authorize DOL and the OIG to have unfettered access to UI claimant data and wage records for our oversight responsibilities. Unfettered access to SWAs' UI claimant data and wage records systems—meaning access without restriction or constraints to the information that is required for the performance of DOL's and the OIG's missions—would assist in the Department's

programmatic oversight responsibilities to identify improper payments and weak controls. It would also allow the OIG to expand its current efforts to share emerging fraud trends with ETA and SWAs to strengthen the UI program and help deter fraud. Data analytics is a vital tool in performing our oversight function.

To underscore this point, based on the data obtained by the OIG, our auditors, investigators, and data scientists collaboratively identified \$45.6 billion dollars in potential fraud paid in specific high-risk areas, such as to multistate claimants and deceased persons.<sup>146</sup> Also, the OIG shared its methodology and underlying data with ETA to allow the Department and SWAs to analyze concerning claims and to strengthen controls to detect and deter future fraud. The OIG was further able to recommend programmatic changes to put billions in federal funds to better use. Conducting data analytics from such access would further enable our auditors to identify program weaknesses and recommend corrective actions that would improve the timeliness of UI benefit payments and the integrity of the UI program.

### **Extend the Statute of Limitations Associated with Pandemic-Related Unemployment Insurance Fraud**

Currently, the statute of limitations for many of the OIG's pandemic-related UI fraud investigations will begin to expire in early 2025 as the statutes most often used to prosecute UI fraud have a 5-year limitation. The U.S. Small Business Administration

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<sup>146</sup> Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion, Report No. 19-22-005-03-315 (September 21, 2022), available at: <https://www.oig.dol.gov/public/reports/oa/2022/19-22-005-03-315.pdf>

## Legislative Recommendations

faced a similar issue regarding pandemic-related fraud in the Paycheck Protection Program and Economic Injury Disaster Loan program. To address those concerns, Congress recently passed legislation to extend associated statutes of limitations.

Congress should likewise act to extend the statute of limitations for fraud associated with pandemic-related UI programs to help ensure investigators and prosecutors have time to effectively pursue and hold accountable those who defrauded the UI programs during the pandemic. To do so, Congress would likely have to extend the statute of limitations for existing laws when pandemic-related UI programs are defrauded. The expansion of the statute of limitations for pandemic-related UI fraud would help ensure many groups and individuals that have targeted the program do not escape justice.

Further, for similar reasons, Congress could consider extending the federal statute of limitations for states to pursue administrative recoveries in cases of proven overpayments including fraud and with appropriate due process.

### **Authorize OIG Participation in Asset Forfeiture Funds to Combat UI Fraud and Other Crimes**

Legislative authority in the area of asset forfeiture would increase the OIG's ability to effectively and efficiently investigate UI fraud and other crimes and to recover fraudulently obtained funds.<sup>147</sup>

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<sup>147</sup> According to DOJ, forfeiture "is the legal process by which title to an asset is transferred to the government... because that asset was derived from, used to facilitate, or involved in criminal conduct in a manner that subjects it to forfeiture under an applicable asset forfeiture statute." DOJ, Asset Forfeiture Policy Manual (2021), available at: <https://www.justice.gov/criminalafmls/file/839521/download>

Asset forfeiture is a critical legal tool that serves a number of compelling law enforcement purposes. It is designed to deprive criminals of the proceeds of their crimes, to break the financial backbone of organized criminal syndicates, and to recover property that may be used to compensate victims and deter criminal activity. Currently, the OIG is not a participant in the U.S. Department of the Treasury Forfeiture Fund or the U.S. Department of Justice (DOJ) Asset Forfeiture Fund. The lack of authority to participate limits the OIG's ability to effectively recover proceeds of UI fraud and other crimes under the OIG's jurisdiction. Statutory authority to seize and forfeit illicit funds would allow the OIG to participate in the U.S. Department of the Treasury Forfeiture Fund and the DOJ Asset Forfeiture Fund, thus enabling the OIG to better combat UI fraud and other crimes in the future.

### **Enact the UI Integrity Legislative Proposals**

The OIG encourages Congress to consider and adopt DOL proposals to aid the Department's efforts to combat improper payments in the UI program. In its Fiscal Year (FY) 2024 Congressional Budget Justification,<sup>148</sup> the Department proposed provisions designed to provide new and expanded tools and controls for states to help ensure workers are properly paid and to prevent improper payments, including fraud, in the UI system.

The Department stated that the proposals collectively would result in savings of more than

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<sup>148</sup> U.S. Department of Labor, FY 2024 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations, available at: <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-07.pdf>



## Legislative Recommendations

\$2 billion over the 10-year budget window. These are similar to DOL proposals included in prior DOL budget requests that would help address UI program integrity and the high improper payment rates in the UI program. The proposals from the President's FY 2024 budget request include the following:

- require SWAs to cross-match UI claims against the National Directory of New Hires;
- require SWAs to cross-match UI claims with a system(s)...that contains information on individuals who are incarcerated;
- require states to disclose information to the OIG;
- allow SWAs to retain up to 5 percent of recovered fraudulent UI overpayments for program integrity use;
- require SWAs to use [UI] penalty and interest collections solely for UI administration; and
- permit the Department to collect and store states' UI claimant data.

These legislative proposals are consistent with previous OIG reporting to improve the UI program. To maintain UI program integrity, the OIG has recommended, as of February 2021, establishing legislation that requires SWAs to cross-match high-risk areas, including UI benefits paid to individuals with Social Security numbers: filed in multiple states, belonging to deceased persons or federal prisoners, or used to file UI claims with suspicious email accounts.

### **Provide Authority to Ensure the Integrity of the H-1B Program**

If DOL is to have a meaningful role in the foreign labor certification process for H-1B specialty occupation visas, it must have the statutory authority to ensure the integrity of that process. This authority should include the ability to verify

the accuracy of information provided on labor condition applications and to initiate its own H-1B investigations more broadly. Currently, unlike investigations into the H-2A and H-2B programs, DOL's authority to investigate H-1B employers is limited and typically requires a complaint by an aggrieved party. In the absence of such a complaint, with limited exceptions, DOL may only initiate its own H-1B investigations if the Secretary (or Acting Secretary) personally certifies there is reasonable cause to believe the employer is not in compliance. Even assuming that such personal certification is obtained, the violations DOL is permitted to find in Secretary-certified investigations are limited. These investigations are restricted to willful, pattern- or practice-, or substantial violations of the Labor Condition Application requirements regarding prevailing wage and benefits, working conditions, labor disputes, and notification of applications.

Additionally, such an investigation must be conducted under specific procedures and may only be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with H-1B requirements. A notice also must be provided to the employer to allow a rebuttal of the allegations before the investigation begins.

Our concern with the Department's limited ability to ensure the integrity of the certification process is heightened by the results of OIG analyses and investigations showing that the program is susceptible to significant fraud and abuse, particularly by employers and attorneys. For example, some staffing companies utilize the H-1B program without having scheduled jobs already lined up. Some employers and attorneys misrepresent their need for workers to DOL,

## Legislative Recommendations

then reassign the extra workers to other companies or require foreign workers to find their own work. There have also been instances when companies illegally generated profits by requiring foreign workers to pay fees and recurring payments to secure H-1B visas.

Without statutory authority to ensure program integrity, the Department generally cannot verify employers' attestations to H-1B certifications unless a complaint is filed or the Department utilizes a Secretary-initiated investigation, for which DOL developed a process in FY 2021. As foreign workers are generally reluctant to file complaints for fear of retaliation and losing their jobs, it is unlikely to result in verification action being taken.

### Amend Pension Protection Laws

Legislative changes to the Employment Retirement Income Security Act of 1974 (ERISA) and criminal penalties for ERISA violations would enhance the protection of assets in pension plans. To this end, the OIG continues to recommend the following legislative actions:

- **Expand the authority of the Employee Benefits Security Administration to correct substandard benefit plan audits and ensure that auditors with poor records do not perform additional audits.** Changes should include providing the Employee Benefits Security Administration with greater enforcement authority over registration, suspension, and debarment as well as the ability to levy civil penalties against employee benefit plan auditors. The ability to correct substandard audits and take action against auditors is essential as benefit plan audits help protect participants and beneficiaries by ensuring the proper valuation of plan assets and computation of benefits.
- **Require direct reporting of ERISA violations to DOL.** Under current law, a pension plan auditor who finds a potential ERISA violation is responsible for reporting it to the plan administrator, but not directly to DOL. To ensure that improprieties are addressed, we recommend that plan administrators or auditors be required to report potential ERISA violations directly to DOL. This change would ensure the timely reporting of violations and would more actively involve auditors in safeguarding pension assets as a first line of defense against the abuse of workers' pension plans.
- **Strengthen criminal penalties in United States Code Title 18.** Three sections of United States Code Title 18 serve as the primary criminal enforcement tools for protecting pension plans covered by ERISA. Section 664 sets penalties for embezzlement or theft from employee pension and welfare plans; Section 1027 sets penalties for making false statements in documents required by ERISA; and Section 1954 sets penalties for giving or accepting bribes related to the operation of ERISA-covered plans. Sections 664 and 1027 subject violators to up to
- **Repeal ERISA's limited-scope audit exemption.** This exemption excludes pension plan assets invested in financial institutions, such as banks and savings and loan firms, from audits of employee benefit plans. Notwithstanding recent changes to auditing standards that strengthen limited-scope audits, these audits prevent independent public accountants who are auditing pension plans from rendering an opinion on the plans' financial statements in accordance with professional auditing standards. These "no opinion" audits offer weak assurance of asset integrity either to plan participants or to the Department.

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5 years' imprisonment while Section 1954 calls for up to 3 years' imprisonment for violators. The OIG recommends raising the maximum penalty up to 10 years for all three violations to correspond with the 10-year penalty imposed by Section 669 (for theft from health care benefit programs). An increased penalty would serve as a greater deterrent and, consequently, further protect employee pension plans.

### Improve the Integrity of the FECA Program

Legislative reforms should be considered in the following areas to improve the effectiveness and integrity of the Federal Employees' Compensation Act (FECA) program:

- **Provide statutory access to the National Directory of New Hires and Social Security wage records.** Currently, the Department has no access to the National Directory of New Hires data and can access Social Security wage information only if the claimant gives it permission. Granting the Department routine access to these databases would aid in detecting fraud committed by individuals receiving FECA wage loss compensation but failing to report income they have earned.
- **Establish a 3-day waiting period at the beginning of the claims process.** FECA legislation provides for a 3-day waiting period, which is intended to discourage the filing of frivolous claims. As currently written, however, the legislation places the waiting period at the end of the 45-day continuation-of-pay period, thereby negating its purpose. Legislation that passed in 2006 placed the waiting period for postal employees immediately after an employment-related injury. If the intent of the law is to ensure a true waiting period before



an employee applies for benefits, then that period should likewise come immediately after an employment-related injury—for all federal workers, not exclusively postal employees. This proposal was included in the President's FY 2021 budget as part of the Office of Workers' Compensation Programs' FECA reform.

- **Allow the temporary suspension of medical providers pending the outcome of criminal investigations.** While FECA regulations allow the Office of Workers' Compensation Programs to exclude a provider through administrative means, the Office of Workers' Compensation Programs must give notice to the provider and afford the provider an opportunity for a hearing before DOL's Office of Administrative Law Judges. This process and the various procedures involved can be lengthy. Legislative changes are necessary to enable DOL to immediately suspend all medical providers who have been indicted for fraudulent billing practices from providing further medical services and receiving payments. This proposal was included in the President's FY 2021 budget as part of the Office of Workers' Compensation Programs' FECA reform.



# Appendices

## Appendices

# Reporting Requirements Under the Following Acts

### The Inspector General Act of 1978, as Amended

REPORTING	REQUIREMENT	PAGE
Section 4(a)(2)	Recommendations on existing and proposed legislation and regulations relating to the programs and operations of DOL	99
Section 5(a)(1)	Description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the establishment and associated reports and recommendations for corrective action made by the Office	All
Section 5(a)(2)	Identification of each recommendation made before the reporting period, for which corrective action has not been completed, including the potential costs savings associated with the recommendation	All
Section 5(a)(3)	Summary of significant investigations closed during the reporting period	57-79
Section 5(a)(4)	Identification of the total number of convictions during the reporting period resulting from investigations	133
Section 5(a)(5)	Information regarding each audit, inspection, or evaluation report issued during the reporting period, including— (A) a listing of each audit, inspection, or evaluation; (B) if applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use, including whether a management decision had been made by the end of the reporting period	112
Section 5(a)(6)	Information regarding any management decision made during the reporting period with respect to any audit, inspection, or evaluation issued during a previous reporting period	116
Section 5(a)(7)	Information from the Federal Financial Management Improvement Act Section 804(b) — instances in which an agency has not met intermediate target dates in a remediation plan, and the reasons	None to report
Section 5(a)(8)	Peer review reporting: (A) results of any peer review conducted by another OIG, or (B) a statement identifying the date of the last peer review conducted	135

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Section 5(a)(9)	Outstanding peer review recommendations	None to report
Section 5(a)(10)	Peer reviews conducted by the OIG and recommendations outstanding or not fully implemented	None to report
Section 5(a)(11)	Statistical tables on investigative findings showing total number of: (A) reports issued; (B) persons referred to the U.S. Department of Justice for prosecution; (C) persons referred to state and local prosecuting authorities; and (D) indictments and criminal informations that resulted from any prior referral to prosecuting authorities	133
Section 5(a)(12)	Metrics used for developing the data for the statistical tables	133
Section 5(a)(13)	Summary of investigations of senior government employees where allegations of misconduct were substantiated, including the facts, circumstances, status, and disposition of the matter	89
Section 5(a)(14)	Description of whistleblower retaliation cases including information about the official found to have engaged in retaliation and what, if any, consequences that establishment imposed to hold that official accountable	93
Section 5(a)(15) and Section 6(c)(2)	Information related to interference by the establishment, including— (A) a detailed description of any attempt by the establishment to interfere with the independence of the Office, including— (i) with budget constraints designed to limit the capabilities of the Office; and (ii) incidents where the establishment has resisted or objected to oversight activities of the Office or restricted or significantly delayed access to information, including the justification of the establishment for such action; and (B) a summary of each report made to the head of the establishment under section 6(c)(2) during the reporting period	None to report
Section 5(a)(16)	(A) Descriptions of inspections, evaluations, audits, and investigations that are closed and were not disclosed to the public; and (B) Descriptions of investigations conducted by the office involving a senior government employee that are closed and were not disclosed to the public	None to report

### Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

REPORTING	REQUIREMENT	PAGE
Section 989(C)	Peer review reporting	135

## Appendices

# Funds Recommended for Better Use

### Funds Put to a Better Use Agreed to by DOL<sup>149</sup>

	Number of Reports	Dollar Value (\$ millions)
For which no management decision had been made as of the commencement of the reporting period	1	\$29,600
Issued during the reporting period		\$0
<b>Subtotal</b>	<b>1</b>	<b>\$29,600</b>
For which a management decision was made during the reporting period:		
• Dollar value of recommendations that were agreed to by management	0	\$0
• Dollar value of recommendations that were not agreed to by management	0	\$0
For which no management decision had been made as of the end of the reporting period	1	<b>\$29,600</b>

### Funds Put to a Better Use Implemented by DOL

	Number of Reports	Dollar Value (\$ millions)
For which final action had not been taken as of the commencement of the reporting period	3	\$39,310
For which management or appeal decisions were made during the reporting period	0	\$0
<b>Subtotal</b>	<b>3</b>	<b>\$39,310</b>
For which management decision was made during the reporting period:		
• Dollar value of recommendations that were actually completed	0	\$0
• Dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed	0	\$0
For which no final action had been taken by the end of the period	3	<b>\$39,310</b>

<sup>149</sup> The term “recommendation that funds be put to better use” means a recommendation by the OIG that funds could be used more efficiently or achieve greater program effectiveness if management took actions to implement and complete the recommendation. This term is defined by the Inspector General Act of 1978, as amended, and includes, among other things, reductions in future outlays; deobligation of funds from programs or operations; costs not incurred in the future by implementing recommended improvements related to the operations of the establishment, a contractor, or a grantee; and any other savings specifically identified, including reverting funds to the U.S. Department of the Treasury to be used for other purposes.

## Appendices

# Questioned Costs

### Resolution Activity: Questioned Costs<sup>150</sup>

	Number of Reports	Questioned Costs (\$ millions)
For which no management decision had been made as of the commencement of the reporting period (as adjusted)	0	\$0
Issued during the reporting period	1	\$321
Subtotal	0	\$0
For which a management decision was made during the reporting period:		
• Dollar value of disallowed costs	0	\$0
• Dollar value of costs not disallowed	0	\$0
For which no management decision had been made as of the end of the reporting period	1	\$321
For which no management decision had been made within six months of issuance	0	\$0

### Closure Activity: Disallowed Costs<sup>151</sup>

	Number of Reports	Disallowed Costs (\$ millions)
For which final action had not been taken as of the commencement of the reporting period (as adjusted)	0	\$0
For which management or appeal decisions were made during the reporting period	0	\$0
Subtotal	0	\$0
For which final action was taken during the reporting period:		
• Dollar value of disallowed costs that were recovered	0	\$0
• Dollar value of disallowed costs that were written off	0	\$0
• Dollar value of disallowed costs that entered appeal status	0	\$0
For which no management decision had been made within six months of issuance	0	\$0

<sup>150</sup> As defined by the Inspector General Act of 1978, as amended, questioned costs include alleged violations of law, regulations, contracts, grants, or agreements; costs not supported by adequate documentation; or the expenditure of funds for an intended purpose that was unnecessary or unreasonable.

<sup>151</sup> Disallowed costs are costs that the OIG questioned during an audit as unsupported or unallowable and that the grant/contracting officer has determined the auditee should repay. The Department is responsible for collecting the debts established. The amount collected may be less than the amount disallowed, and monies recovered usually cannot be used to fund other program operations and are returned to the U.S. Department of the Treasury.

## Appendices

# Final Audit Reports Issued

Report Title; Report Number; Date Issued	Number of Recommendations	Questioned Costs (\$)	Funds Put To Better Use (\$)	Management Decision Made by End of Reporting Period
<b>Employment and Training Administration</b>				
Alert Memorandum: ETA and States Need to Ensure the Use of Identity Verification Service Contractors Results in Equitable Access to Unemployment Insurance Benefits and Secure Biometric Data; Report No. 19-23-005-03-315; 3/31/23	3	\$0	\$0	No
Total (1 Report)				
<b>Office of the Chief Financial Officer</b>				
FY 2022 DOL's Consolidated Financial Statements Report; Report No. 22-23-002-13-001; 12/13/22	3	\$0	\$0	Yes
DOL FY 2022 Management Advisory Comments; Report No. 22-23-005-13-001; 1/30/23	8	\$0	\$0	Yes
Total (2 Reports)				
<b>Office of Chief Information Officer</b>				
FY 2022 FISMA DOL Information Security Report; Report No. 23-23-001-07-725; 2/10/23	8	\$0	\$0	No
Total (1 Report)				
<b>Occupational Safety and Health Administration</b>				
COVID-19: OSHA's Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards; Report No. 19-23-001-10-105; 10/31/22	5	\$0	\$0	Yes
OSHA Needs to Better Address Complaints and Referrals for Increased Worker Safety; Report No. 02-23-001-10-10-105; 3/6/23	3	\$0	\$0	No
Total (2 Reports)				
<b>Office of Workers Compensation Programs</b>				
Special Report Relating to the Federal Employees' Compensation Act Special Benefit Fund September 30, 2022; Report No. 22-23-001-04-431; 11/3/22	0	\$0	\$0	No Response Required <sup>152</sup>
COVID-19: Insights on Telehealth Use and Program Integrity Risks in DOL Workers' Compensation Programs During the Pandemic; Report No. 19-23-002-04-001; 12/13/22	0	\$0	\$0	No Response Required
FY 2021 Longshore and Harbor Workers' Compensation Act Special Fund Financial Statements and Independent Auditors' Report; Report No. 22-23-003-04-432; 2/22/23	0	\$0	\$0	No Response Required
FY 2021 District of Columbia Workmen's Compensation Act Special Fund Financial Statements and Independent Auditors' Report; Report No. 22-23-004-04-432; 2/22/23	2	\$0	\$0	No
OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program; Report No. 03-23-001-04-431; 3/31/23	10	\$321,261,486	\$0	No
Total (5 Reports)				
<b>Final Audit Total (11 Reports)</b>	<b>42</b>	<b>\$321,261,486</b>	<b>\$0</b>	

<sup>152</sup> No Response Required in the Semiannual Report indicates that no management decision response was required because the report issued had no recommendations.

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## Other Reports

Report Title; Report Number; Date Issued	Number of Recommendations	Management Decision Made by End of Reporting Period
<b>Employment and Training Programs</b>		
<b>Workforce Innovation and Opportunity Act</b>		
Quality Control Review Single Audit of State of New Mexico Workforce Solutions Department for The Year Ended June 30, 2021; Report No. 24-23-001-50-598; 3/7/23	2	No
Quality Control Review Single Audit of Service, Employment, and Redevelopment Jobs for Progress National, Inc. for The Year Ended June 20, 2022; Report No. 24-23-002-50-598; 3/30/23	0	No Response Required
<b>Total (2 Reports)</b>		
<b>Congressional Testimony</b>		
<b>Testimony before the U.S. House of Representatives Committee on Ways and Means</b>		
The Greatest Theft of American Tax Dollars: Unchecked Unemployment Fraud; Report No. 19-23-003-03-315; 2/8/23	0	No Response Required
<b>Testimony before the U.S. House of Representatives Committee on Oversight and Accountability Subcommittee on Government Operations and the Federal Workforce</b>		
Waste, Fraud, and Abuse Go Viral: Inspectors General on Curing the Disease; Report No. 19-23-004-03-315; 3/9/23	0	No Response Required
<b>Total (2 Reports)</b>		
<b>Other Reports Total (4 Reports)</b>	<b>2</b>	



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# Unresolved Audit Reports Over 6 Months Old

Agency	Report Title; Report Number; Date Issued	Number of Unimplemented Recommendations	Questioned Costs (\$)
<b>Agency Management Decision or Grant/Contracting Officer's Final Determination Did Not Resolve; OIG Negotiating with Agency</b>			
ETA	COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act; Report No. 19-20-008-03-315; 08/07/20	1	\$0
ETA	Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General; Report No. 19-21-005-03-315; 06/16/21	2	\$0
ETA	Unemployment Insurance Overpayments Related to Work Search Underscore the Need for More Consistent State Requirements; Report No. 04-21-001-03-315; 09/29/21	1	\$0
ETA	Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs; Report No. 19-22-004-03-315; 08/02/22	1	\$0
ETA	Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 09/21/22	2	\$0
ETA	COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or From Payment Delays; Report No. 19-22-006-03-315; 09/30/22	2	\$0
MSHA	MSHA Needs to Provide Better Oversight of Emergency Response Plans; Report No. 05-17-002-06-001; 03/31/17	2	\$0
MSHA	MSHA Did Not Evaluate Whether Civil Monetary Penalties Effectively Deterred Unsafe Mine Operations; Report No. 23-19-002-06-001; 08/16/19	2	\$0
MSHA	MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica; Report No. 05-21-001-06-001; 11/12/20	2	\$0
OASAM	FISMA Fiscal Year 2015: Ongoing Security Deficiencies Exist; Report No. 23-16-002-07-725; 09/30/16	1	\$0

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OFCCP	OFCCP Did Not Show It Adequately Enforced EEO Requirements on Federal Construction Contracts; Report No. 04-20-001-14-001; 03/27/20	1	\$0
OSEC	DOL's IT Governance Lacked the Framework Necessary to Support the Overall Mission; Report No. 23-21-002-01-001; 09/30/21	1	\$0
<b>Agency Management Decision or Grant/Contracting Officer's Final Determination Not Issued By Close of Period</b>			
<b>Total Nonmonetary Recommendations and Questioned Costs</b>		<b>18</b>	<b>\$0</b>

Agency	Report Title; Report Number; Date Issued	Number of Recommendations	Funds Recommended for Better Use (\$)
<b>Agency Management Decision or Grant/Contracting Officer's Final Determination Did Not Resolve; OIG Negotiating with Agency</b>			
ETA	Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 09/21/22	1	\$29,581,490,253
<b>Total Funds Recommended for Better Use</b>		<b>1</b>	<b>\$29,581,490,253</b>

Total Audit Exceptions and Questioned Costs	18	\$0
Total Funds Recommended for Better Use	1	\$29,581,490,253
Total Audit Exceptions and Funds Recommended for Better Use	19	\$29,581,490,253

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# Management Decision Made During this Reporting Period on Audits, Inspections, or Evaluations Issued during a Previous Reporting Period

Report Title; Report Number; Date Issued	Number of Recommendations	Questioned Costs (\$)	Funds Put to Better Use (\$)	Management Decision Made on Previously Issued Audits
<b>Employment and Training Administration</b>				
Alert Memorandum: The Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs; Report No. 19-22-004-03-315; 08/02/22	2	\$0	\$0	Yes
Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 09/21/22	3	\$0	\$29,581,490,253	Yes
COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or From Payment Delays; Report No. 19-22-006-03-315; 09/30/22	5	\$0	\$0	Yes
Total (3 Reports)				
<b>Office of the Assistant Secretary for Policy</b>				
DOL Made Progress in Implementing Geospatial Data Act Requirements, but More Needs to Be Done; Report No. 23-22-003-01-001; 09/30/22	3	\$0	\$0	Yes
Total (1 Report)				
<b>Office of the Chief Financial Officer</b>				
The U.S Department of Labor Did Not Meet the Requirements for Compliance with the Payment Integrity Information Act for FY 2021; Report No. 22-22-007-13-001; 07/01/22	2	\$0	\$0	Yes
Total (1 Report)				
<b>Office of Workers' Compensation Programs</b>				
Alert Memorandum: The Office of Workers' Compensation Programs' Workers' Compensation Medical Bill Process System Data Were of Undetermined Reliability; Report No. 23-22-002-04-001; 09/26/22	1	\$0	\$0	Yes
Total (1 Reports)				
Final Audit Total (6 Reports)	16	\$0	\$29,581,490,253	

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## Other Reports

Report Title; Report Number; Date Issued	Number of Recommendations	Management Decision Made
<b>Employment and Training Programs</b>		
<b>Workforce Innovation and Opportunity Act</b>		
Quality Control Review for the Single Audit of the State of Hawaii for the Fiscal Year Ended June 30, 2020; Report No. 24-22-003-03-315; 06/08/22	0	No Response Required
Quality Control Review for the Single Audit of AARP Foundation for the Year Ended December 30, 2021; Report No. 24-22-004-50-598; 09/30/22	2	No
<b>Total (2 Reports)</b>		
<b>Departmental Programs</b>		
<b>Office of the Chief Financial Officer</b>		
Risk Assessment of DOL's Purchase and Travel Card Programs; Report No. 22-22-008-50-598; 08/31/22	0	No Response Required
<b>Total (1 Report)</b>		
<b>Other Reports Total (3 Reports)</b>	<b>2</b>	

# Corrective Actions Taken by the Department

*During this reporting period, we took final action to close recommendations within reports based on corrective action taken by the Department. The following is a summary of the most significant actions.*

## **COVID-19: MSHA Faces Multiple Challenges in Responding to the Pandemic; Report No. 19-20-006-06-001; 7/24/2020**

On March 28, 2020, the Department of Homeland Security labeled mining among critical infrastructure industries that states should consider keeping open to help in the U.S. response to the COVID-19 pandemic. Since mines continued to operate, MSHA continued to perform mine inspections and investigations. Given the risks to both miners and MSHA's workforce, we conducted an audit to determine the plans and guidance MSHA had developed to address challenges created by COVID-19 and to decide to what extent these challenges affected MSHA's ability to protect the safety of miners and its workforce.

Our audit found MSHA had to suspend or reduce certain types of enforcement activities due to the pandemic. We recommended the Assistant Secretary for Mine Safety and Health monitor the potential backlog of suspended and reduced enforcement activities and develop a plan to manage the backlog once full operations resume.

In February 2023, MSHA personnel notified us they had no backlog remaining from the pandemic and responded to the OIG's questions related to potential backlogs for nine specific types of enforcement activities. We closed this recommendation based on the responses MSHA provided to our questions on select activity codes that could potentially have a backlog from the pandemic.

## **COVID-19: Delays in Providing Disaster Relief Jeopardize \$366 Million Disaster Worker Grant Program; Report No. 19-22-002-03-391; 01/28/22**

On March 27, 2020, the CARES Act became law. The CARES Act provided additional funding in the amount of \$345 million for necessary expenses for the Dislocated Worker National Reserve to prevent, prepare for, and respond to the pandemic. From April to August 2020, ETA awarded 57 grants totaling \$366 million.

The OIG contracted with an independent certified public accounting firm (Firm) to conduct a performance audit of the \$366 million and found ETA generally administered the Disaster National Dislocated Worker Grant program in accordance with applicable federal regulations and guidelines. However, there was a significant delay in the length of time for grant recipients to provide disaster relief employment and training from approximately 1 to 9 months. With 38 percent of the grant periods elapsed, and minimal grant spending, it is unlikely that grant recipients will effectively use the funds and deliver services by the end of the grant



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period. Moreover, there was a failure to quickly roll out programs and achieve targets for providing training services and returning participants back to employment. In addition, for the 15 sampled grants, 2 grant recipients exceeded the 60-day deadline to provide the full application per Training and Employment Guidance Letter 12-19. ETA's delay in obtaining the full application while allowing grant recipients to draw funding increases the risk of unallowable costs being incurred and performance goals not being met.

In response to the Firm's audit, ETA took corrective actions to improve its Dislocated Worker Grants program. ETA performed monitoring reviews and provided technical assistance to the States of Florida, New York, Nevada, and Louisiana. Specifically, ETA provided technical assistance, including hosting a series of peer-to-peer sessions that allowed COVID-19 Dislocated Worker Grants recipients the opportunity to share with one another their challenges with COVID-19 Dislocated Worker Grants implementation, as well as possible solutions to attain planned goals, and regular virtual technical assistance meetings. In addition, ETA approved the following no-cost extensions for the States of:

- Florida – extended the grant period of performance to March 31, 2023;
- Louisiana – extended the grant period of performance to December 31, 2022;
- Nevada – extended the grant period of performance to September 30, 2023; and
- New York – extended the grant period of performance to June 30, 2023.

As of the quarter ending September 30, 2022, the States of:

- Florida has expended 94 percent of its grant award and enrolled 92 percent of its targeted participants;
- Louisiana has expended 49 percent of its grant award and enrolled 23 percent of its targeted participants;
- Nevada has expended 85 percent of its grant award and enrolled 96 percent of its targeted participants; and
- New York has expended 49 percent of its grant award and enrolled 41 percent of its targeted participants.

### **ETA Should Do More to Assist Vulnerable States Prepare for Disaster Unemployment Assistance Program Implementation; Report No. 04-20-002-03-315; 09/29/20**

In FY 2017, Hurricanes Harvey, Irma, and Maria devastated parts of the Caribbean Islands and the United States. The Federal Emergency Management Agency, by way of administration from ETA, granted approximately \$85 million in Disaster Unemployment Assistance program funds to the States of Florida, Georgia, and Texas, and the islands of Puerto Rico and the U.S. Virgin Islands. The Disaster Unemployment Assistance program is responsible for providing timely unemployment benefits to individuals who have become unemployed because of a presidential-declared disaster but are not eligible for regular unemployment insurance. Our audit found that ETA did not have adequate policies in place to provide timely oversight or ensure states provided periodic training to staff and developed standard procedures to substantiate a claimant's eligibility. In addition, ETA did not establish adequate controls to ensure states paid only eligible claimants and paid them as promptly as administratively feasible.

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In response to our audit, ETA developed standard operating procedures for the National Disaster Unemployment Assistance Rapid Response, establishing a rapid response team that includes Disaster Unemployment Assistance subject matter experts. ETA also implemented a requirement for states to give assurance that they will conduct annual training and maintain a standard operating procedures manual for the Disaster Unemployment Assistance program each fiscal year as part of the State Quality Service Plan.

### **COVID-19: OSHA Needs to Improve Its Handling of Whistleblower Complaints During the Pandemic; Report No. 19-20-010-10-105; 08/14/20**

The COVID-19 pandemic raised concerns about the safety and health of workers and the protections afforded to workers who report potential workplace safety violations, including those violations involving social distancing and personal protective equipment. OSHA's Whistleblower Protection Program enforces 23 statutes that prohibit employers from retaliating against employees when they report employer violations of various workplace safety, consumer product, environmental, financial reform, and securities laws. This is important because, if OSHA finds merit to an employee's allegations, the employee may be entitled to reinstatement, back pay, restored benefits, or other remedies.

Our audit found the pandemic significantly increased the number of whistleblower complaints received by OSHA, thus challenging OSHA with completing investigations timely. Failure to respond to whistleblower complaints timely may lead to emotional and financial suffering of workers and erosion of key evidence and witnesses. We made recommendations to OSHA regarding staff vacancies, continued assessment of its Region II triage pilot, and development of a caseload management plan to evenly distribute whistleblower complaints among investigators.

In response to our audit, OSHA:

- 1) Initiated efforts to fill the five whistleblower positions with Alternative Dispute Resolution Coordinators, as this program has proven to be an effective and viable alternative to the investigative process and an invaluable asset to OSHA's Whistleblower Protection Program. The Alternative Dispute Resolution Coordinators are being placed in regions without a dedicated Alternative Dispute Resolution Coordinator. Three of the positions have already been filled, and active recruiting is occurring to fill the others;
- 2) Monitored, reviewed, and evaluated the procedures in the Region II triage pilot. As a result, OSHA integrated a portion of the triage pilot into the new Whistleblower Investigations Manual, effectively extending the triage process to all regions; and
- 3) Assigned 25 full-time equivalents to the various regional whistleblower programs in proportion to each region's need. The distribution of the new full-time equivalents will assist the equitable distribution of cases. OSHA also implemented various performance measures to help reduce the backlog of cases.

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### **Region IX Whistleblower Protection Program Complaints Were Not Complete or Timely; Report No. 02-21-001-10-105; 11/23/20**

On July 6, 2018, then-Secretary of Labor Alexander Acosta received a referral from the U.S. Office of Special Counsel that described allegations against the OSHA Whistleblower Protection Program. The program investigates complaints of employer retaliation when employees report violations of law by their employers. The whistleblower in the U.S. Office of Special Counsel's referral was an investigator for OSHA from 2010 to 2015. The whistleblower alleged OSHA's Region IX had breakdowns processing the complaints it received, which, in turn, resulted in widespread failure to protect complainants.

Our audit found problems with the completeness and timeliness of investigations into whistleblower complaints submitted to OSHA's Region IX. We identified that complaints were missing essential elements when investigating the complaints and that cases exceeded statutory timeframes for investigations by an average of 634 days. We made recommendations to OSHA regarding case management, monitoring, and development of guidance.

In response to our audit, OSHA:

- 1) Created a formula using its Performance Measures and Key Indicators Report and Screening and Investigation Data Reports to determine 25 full time equivalents were needed to reach an annual caseload of 25 completed cases per investigator. Using ARPA funding and to decrease a rising backlog, OSHA assigned 25 full time equivalents to the various regional whistleblower programs in proportion to each region's needs;
- 2) Created investigative procedures in its Whistleblower Investigations Manual pertaining to reasonable balance between quality and timeliness of its investigations. These procedures reflected the best practices developed across all OSHA regions;
- 3) OSHA issued CPL 02-03-010, Whistleblower Protection Program Pilot Procedures. The directive enables the regions to construct and test new procedures to experiment with greater efficiencies. Upon completion of the pilot period, a review and evaluation are performed to determine whether it expands into national policy and, subsequently, into the next Whistleblower Investigations Manual update; and
- 4) Instituted Quality Review Audits to regularly audit a sampling of cases to review whether investigators are following procedures and meeting all investigation requirements.

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# Unimplemented Recommendations

*During this reporting period, we encountered one instance of audits or evaluations provided to the Department for comment that were not responded to within 60 days. However, management decisions were received in response to all audits and evaluations issued before the commencement of this reporting period. From October 1, 2011, through September 30, 2022, the OIG made 1,717 audit recommendations, of which 166 have not been fully implemented. These 166 recommendations include 105 recommendations resulting from audits issued since the end of FY 2020, and, in many cases, the corrective action plans are in place.*

### RECOMMENDATIONS MADE PRIOR TO OCTOBER 1, 2022, NOT YET IMPLEMENTED

Fiscal Year	Total Number of Recommendations Made	Unimplemented Recommendations	
		Total Number	Monetary Impact (\$)
2011	319	6	\$0
2012	213	1	\$0
2013	195	0	\$0
2014	128	1	\$0
2015	163	2	\$0
2016	100	1	\$0
2017	112	8	\$0
2018	98	2	\$0
2019	84	21	\$0
2020	105	19	\$0
2021	133	64	\$39,311,226,638
2022	67 <sup>153</sup>	41	\$29,581,490,253
<b>Total</b>	<b>1,717</b>	<b>166</b>	<b>\$68,892,716,891</b>

<sup>153</sup> Total includes four recommendations in two Quality Control Review reports that were issued to accounting firms in FY 2022.

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# High-Priority Unimplemented Recommendations

The following table summarizes the unimplemented recommendations the OIG considers to be the highest priorities for the Department.

Report Title; Report Number; Date Issued	Unimplemented Recommendation(s)
<b>Unemployment Insurance Benefits</b>	
COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act; Report No. 19-20-008-03-315; 08/07/20	Include CARES Act UI transactions in the Benefit Accuracy Measurement (BAM) or develop an alternative methodology to reliably estimate improper payments for those programs; <sup>154</sup> Issue guidance directing states to provide access to state UI claimant data to prevent and detect fraud.
Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas; Report No. 19-21-002-03-315; 02/22/21	Establish effective controls, in collaboration with SWAs, to mitigate fraud and other improper payments to ineligible claimants, including the areas identified in the memorandum: UI benefits paid to multistate claimants, claimants who used the Social Security numbers of deceased individuals, potentially ineligible federal inmates, and claimants with suspicious email accounts; Effective controls will help prevent similar or greater amounts of fraud and allow those funds to be put to better use; Work with Congress to establish legislation requiring SWAs to cross-match high-risk areas, including the four areas identified in the memorandum.
COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs; Report No. 19-21-004-03-315; 05/28/21	Continue to work with states to develop, operate, and maintain a modular set of technological capabilities to modernize the delivery of UI benefits that is sufficient to manage and process sudden spikes in claims volume during emergencies or high unemployment.
Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General; Report No. 19-21-005-03-315; 06/16/21	Amend 20 CFR 603.5 and 603.6(a) through the rulemaking process to reinforce that UI information must be provided to DOL OIG for all IG engagements authorized under the IG Act, including audits, evaluations, and investigations.
Alert Memorandum: The Employment and Training Administration Does Not Require the National Association of State Workforce Agencies to Report Suspected Unemployment Insurance Fraud Data to the Office of Inspector General or the Employment and Training Administration; Report No. 19-21-006-03-315; 07/01/21	Take immediate action to require the National Association of State Workforce Agencies to refer information to ETA and the OIG on suspected fraud, waste, abuse, mismanagement, or misconduct, per Department of Labor Manual Series (DLMS) 8-106(D)(3); Such actions could include modification of ETA's grant award or issuance of unemployment insurance program policy guidance to ensure ETA complies with the notice requirement and its grantees comply with the reporting requirements of the DLMS; Continue to work with the OIG and, within 30 days of this memorandum, meet with the OIG to develop a permanent approach to OIG access to Integrity Data Hub (IDH) data
Alert Memorandum: Employment and Training Administration Needs to Ensure State Workforce Agencies Report Activities Related to CARES Act Unemployment Insurance Programs; Report No. 19-22-004-03-315; 08/02/22	Continue to identify states that have not complied with ETA's reporting requirements for CARES Act UI programs and work with them to ensure missing reports and information are submitted before commencement of the Department's FY 2022 financial statement audit; Verify the accuracy of reports that cite no activity and ensure corrections are made where warranted.

<sup>154</sup> These programs are: PUA; PEUC; FPUC; Temporary Full Federal Funding; Emergency Unemployment Relief for Governmental Entities, Certain Nonprofit Organizations, and Federally Recognized Indian Tribes; and Temporary Financing of Short-Time Compensation.

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<p>Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 9/21/22</p>	<p>Implement immediate measures to ensure SWAs are required to provide ongoing access to the OIG by amending its current guidance to require disclosures to the OIG for audits and investigations as necessary, mandatory, and without time limitation for the proper oversight of the UI program; Expedite OIG-related amendments to 20 C.F.R. § 603.6(a) to make ongoing disclosures of UI information to DOL OIG mandatory by expressly adding the U.S. Department of Labor, Office of Inspector General (including its agents and contractors) to the list of required disclosures that are necessary for the proper oversight of the UI program without distinction as to purpose (e.g., audits versus investigations); Expedite OIG-related amendments to 20 C.F.R. § 603.5(i) to expressly make disclosures of UI information to federal officials for oversight, audits, and investigations of federal programs mandatory.</p>
<p>COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or from Payment Delays; Report No. 19-22-006-03-315; 09/30/22</p>	<p>Use data collected from monitoring and BAM reports to identify the areas of highest improper payments including fraud and create a plan to prevent similar issues in future temporary UI benefit programs; Require states to have written policies and procedures, which apply lessons learned during the COVID-19 pandemic, to continue eligibility testing and Benefit Payment Control procedures during emergencies or other times of increased claims volume. These policies and procedures should include strategies to pay claimants timely; Work with NASWA to update the IDH Participant Agreement to require state to submit the results of their UI fraud investigations; Work with NASWA to ensure the IDH cross matches are effective at preventing the types of fraud that were detected during the pandemic and regularly update using the results of state fraud investigations; Work with the OIG and states to recover the greatest practicable amount of the \$7,092,604 paid to claimants connected to likely fraudulent claims.</p>
<p>Alert Memorandum: ETA and States Need to Ensure the Use of Identity Verification Service Contractors Results in Equitable Access to Unemployment Insurance Benefits and Secure Biometric Data; Report No. 19-23-005-03-315; 3/31/23</p>	<p>Provide guidance that ensures SWAs provide upfront, clear, consistent, and fair alternatives to services that rely on facial recognition technology; Require SWAs that use facial recognition technology to test the system for biases and design procedures to mitigate those effects. SWAs need to report findings from bias testing to ETA regarding implementation or use of identity verification services that rely on facial recognition technology; Provide guidance to SWAs to help ensure that contracts with identity verification service providers include requirements on the secure storage of data, destruction of the data once the contract is concluded, and purging of any large datasets collected by identity verification service providers on a regular basis.</p>
<b>Worker Safety</b>	
<p>MSHA Needs to Provide Better Oversight of Emergency Response Plans; Report No. 05-17-002-06-001; 03/31/17</p>	<p>Clarify mine operators' responsibilities for local coordination under the Mine Improvement and New Emergency Response (MINER) Act, including coordination and communication between the operator, mine rescue teams, and local emergency response personnel, and familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.</p>
<p>MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica; Report No. 05-21-001-06-001; 11/12/20</p>	<p>Adopt a lower legal exposure limit for silica in coal mines based on recent scientific evidence; Establish a separate standard for silica that allows MSHA to issue citations and monetary penalty when violations of its silica exposure limit occur; Enhance its sampling program to increase the frequency of inspector samples where needed (e.g., by implementing a risk-based approach).</p>
<p>OSHA's Diminished Enforcement Left More Workers at Risk for Exposure to Silica; Report No. 02-21-003-10-105; 09/29/21</p>	<p>Implement a policy for future emphasis programs that minimizes the lapse in enforcement between canceled, revised, or new programs; Establish meaningful goals and processes to assess whether OSHA's outreach events are achieving the desired results in reaching a targeted number of workers at risk of exposure to silica.</p>
<p>COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies; Report No. 19-22-003-10-105; 03/31/22</p>	<p>Develop an OSHA outreach plan to be activated during a large-scale safety and health crises such as the COVID-19 pandemic that (a) identifies external federal agencies with enforcement or oversight personnel who are active on worksites and (b) defines how OSHA will collaborate with those agencies; OSHA should consider incorporating into the plan: a process to identify and document highly visible, safety and health hazards for large-scale safety and health crises; a plan for how OSHA will conduct related outreach and training on those hazards and how to refer them to OSHA; and a tracking system for agency referrals and outcomes of those referrals, using that information to periodically inform the outreach plan on areas and types of guidance and training the agencies' oversight and enforcement personnel need; Explore mechanisms to enhance collaboration, such as memorandums of understanding or other written agreements using GAO's seven key features for collaboration, and incorporate a process to utilize those mechanisms into the outreach plan.</p>

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<p>COVID-19: OSHA'S Enforcement Activities Did Not Sufficiently Protect Workers from Pandemic Health Hazards; Report No. 19-23-001-10-105; 10/31/22</p>	<p>Provide additional training to CSHOs to enforce the recording and reporting standard for fatalities; Update guidance or policy to include supervisory review of inspection files to ensure they contain adequate support for the reasons regarding citation issuance decisions before closing inspections; Develop a plan for a future pandemic or epidemic to collaborate with external agencies on worksite case data and to use this data to maximize rapid response and enforcement actions in worksites; As part of OSHA's rulemaking on infectious diseases, require employers to notify all employees of all known positive cases of infectious diseases at the worksite; Develop and implement a tracking tool to ensure OSHA receives and reviews all items CSHOs request during inspections to ensure alleged hazards have been mitigated.</p>
<p>OSHA Needs to Better Address Complaints and Referrals for Increased Worker Safety; Report No. 02-23-001-10-105; 03/06/23</p>	<p>Modify the Field Operations Manual to include a policy for mandatory interviews of complainants and witnesses or document the rationale for lack thereof and provide training to Compliance Safety and Health Officers on the updated requirements.</p>
<p><b>Employment and Training Programs</b></p>	
<p>ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program; Report No. 05-21-004-03-375; 09/30/21</p>	<p>Improve funding opportunity announcements for discretionary grant programs by: evaluating program goals using the SMART concept or a similar approach, and including required metrics that directly measure the success of each program goal, are clear, and are easily verifiable; having a scoring element covering completeness of applicant proposals for items requested in the announcement that reduces in points when the proposal is missing an element(s), significantly changes the wording of an element(s), or incorrectly addresses an element(s); and identifying targeted occupations in the Funding Opportunity Announcement language and/or scoring elements, or requiring submission of the career pathway to an H-1B occupation as support during apprenticeship program registrations or apprentice registrations.</p>
<p><b>Employee Benefits</b></p>	
<p>OWCP'S Efforts to Detect and Prevent FECA Improper Payments Have Not Addressed Known Weaknesses; Report No. 03-12-001-04-431; 02/15/12</p>	<p>Develop effective procedures, including seeking legislative authority to conduct matches with Social Security Administrative (SSA) retirement records, to ensure that claimants who receive SSA retirement benefits are identified timely and their FECA benefits are adjusted accordingly.</p>
<p>EBSA Did Not Have the Ability to Protect the Estimated 79 Million Plan Participants in Self Insured Health Plans from Improper Denials of Health Claims; Report No. 05-17-001-12-121; 11/18/16</p>	<p>Reduce or eliminate exemption thresholds for small plans.</p>
<p>OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program; Report No. 03-23-001-04-431; 3/31/23</p>	<p>Implement a process to ensure competitive prices for the FECA program by regularly evaluating alternate pricing methodologies and other sources—including publicly available benchmark price lists, state fee schedules, market research, and comparable payers—and updating its pricing methodology as appropriate; Implement a process to review the effectiveness of policy changes, including: (a) documented assessment of prescription information after any changes in the authorization, approval, and/or adjudication process; and (b) documented solutions for any performance gaps identified during the review, including follow-up testing; Implement an ongoing pharmaceutical monitoring and alert program to identify and closely monitor significant changes in costs, prescribing patterns, utilization, sources, and new and novel prescription drugs; Establish internal controls that identify prescription drugs payment and management issues in near-real-time; Implement a technology solution to perform ongoing prescription-claim-level reviews in near real-time; Develop and deliver ongoing formal training for staff involved in making pharmaceutical decisions.</p>

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Departmental Management	
FISMA Fiscal Year 2015: Ongoing Security Deficiencies Exist; Report No. 23-16-002-07-725; 09/30/16	Realign the organizational structure as it relates to the CIO to address organizational independence issues.
FY 2019 FISMA DOL Information Security Report: Implementation of Security Tools Hindered by Insufficient Planning; Report No. 23-20-002-07-725; 12/23/19	Implement improvements in DOL's information security program for the following areas: Risk Management, Configuration Management, Identity and Access Management, Data Protection and Privacy, and Information Security Continuous Monitoring.
DOL Needs to Do More to Secure Employees' Personally Identifiable Information in the Travel Management System; Report No. 23-20-003-13-001; 09/10/20	Establish and implement procedures to ensure E2 Solutions (E2) account management practices enforce DOL's security policies; Establish and implement procedures to ensure E2 is managed in compliance with contractual security requirements and DOL computer security policies for contracted information systems.
FY 2020 FISMA DOL Information Security Report: Progress Needed to Improve Risk Management and Continuous Monitoring Information Security Controls; Report No. 23-21-001-07-725; 12/22/20	Provide training to responsible personnel over the third-party continuous monitoring review checklist; Enforce DOL policies and procedures regarding separation of duties so developers do not possess the ability to migrate changes to production; Enforce DOL security baseline policies with DOL's Cloud Service Providers (CSP) and develop a security configuration checklist for the CSP; Develop sufficiently defined quantitative and qualitative metrics that provide meaningful indications of security status and trend analysis at all risk management tiers; Implement a process for approving deviations from established configuration settings.
DOL's IT Governance Lacked the Framework Necessary to Support the Overall Mission Report; Report No. 23-21-002-01-001; 09/30/21	Reorganize the CIO position to have a direct reporting relationship to the Deputy Secretary and independent of ASAM; Ensure the CIO is a lead member with voting rights of DOL's executive strategy and management boards and committees including but not limited to the Management Review Board, Enterprise Shared Services Governance Board, COVID-19 Coordination team, and Enterprise Risk Management Council. Reassess the incorporation of BLS and OCFO as part of IT Shared Services within 2021, and document the reasoning for the decision reached; Establish an MOU or other agreement between the OCIO and all departmental agencies to establish and state the roles and responsibilities of IT between each set of respective agencies; Codify the policies and procedures that define IT governance and key supporting IT elements.
The U.S. Department of Labor Did Not Meet Requirements for Compliance with Payment Integrity Information Act for FY 2021; Report No. 22-22-007-13-001; 07/01/22	Maintain the current focus on increasing technical assistance and funding to states to improve the improper payment reduction strategies in order to reduce the improper payments estimate rate below the 10 percent threshold and demonstrate improvement on the rate; Revise the methodology used to calculate the improper payment information for the FPUC program.
FY 2022 Independent Auditors' Report on DOL's CFS; Report No. 22-23-002-13-001; 12/13/22	Design and implement controls over their respective estimates to ensure management's review of the estimates are performed at a sufficient level of detail, including the methodology, underlying data, and assumptions used to develop the estimates; Maintain documentation of the reviews performed to assess the reasonableness of the methodology, underlying data, and assumptions used to develop the estimates that is sufficiently detailed to evidence the specific items reviewed, analysis performed, and conclusions reached; and provide additional training to the reviewers of the estimates to reinforce established policies and procedures, as necessary.
FY 2022 FISMA DOL Information Security Report: DOL's Information Security Program Not Remaining Current with Security Requirements; Report No. 23-23-001-07-725; 02/10/23	Update DOL entity-wide and system-level security policies, procedures, and plans to comply with NIST SP 800-53, Rev. 5; Develop and implement policies and procedures to update DOL's system repository based on a defined frequency; implement proper quality control to ensure change management processes are being performed for all systems and equipment on the DOL network; Develop Departmental policies and procedures that require all DOL agencies to perform data exfiltration tests to identify gaps in its data exfiltration and network defense; Implement data loss prevention tools and alerts based on the results of agencies' data exfiltration tests; verify if systems have been appropriately authorized in accordance with DOL's policy; Enhance incident response activity training to emphasize the importance of submitting required incidents to the US-CERT within the 1-hour timeframe; implement an automated mechanism to report incidents to the US CERT within the 1-hour timeframe.

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# Summary of Reports with Unimplemented Recommendations with Cost Savings / Funds Put to Better Use

Report Title; Report Number; Date Issued	Number of Unimplemented Recommendations	Funds Put to Better Use (\$)
<b>Employment and Training Administration</b>		
<p>Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas; Report No. 19-21-002-03-315; 02/22/21</p> <p>Establish effective controls, in collaboration with SWAs, to mitigate fraud and other improper payments to ineligible claimants, including the areas identified in the memorandum: UI benefits paid to multistate claimants, claimants who used the Social Security numbers of deceased individuals, potentially ineligible federal inmates, and claimants with suspicious email accounts. Effective controls will help prevent similar or greater amounts of fraud and allow those funds to be put to better use.</p>	1	\$5,409,966,198
<p>COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs; Report No. 19-21-004-03-315; 05/28/21</p> <p>Continue to work with states to develop, operate, and maintain a modular set of technological capabilities to modernize the delivery of UI benefits that is sufficient to manage and process sudden spikes in claims volume during emergencies or high unemployment.</p>	1	\$33,745,677,576
<p>ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program; Report No. 05-21-004-03-375; 09/30/21</p> <p>Improve funding opportunity announcements for discretionary grant programs by conducting the following: Evaluate program goals using the SMART concept or a similar approach, and include required metrics that directly measure the success of each program goal, are clear, and are easily verifiable; have a scoring element covering completeness of applicant proposals for items requested in the announcement that reduces in points when the proposal is missing an element(s), significantly changes the wording of an element(s), or incorrectly addresses an element(s); and identify targeted occupations in the FOA language and/or scoring elements, or require submission of the career pathway to an H-1B occupation as support during apprenticeship program registrations or apprentice registrations.</p>	1	\$155,582,864
<p>Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 09/21/22</p> <p>Expedite OIG-related amendments to 20 C.F.R. § 603.6(a) to make ongoing disclosures of UI information to DOL OIG mandatory by expressly adding the U.S. Department of Labor, Office of Inspector General (including its agents and contractors) to the list of required disclosures that are necessary for the proper oversight of the UI program without distinction as to purpose (e.g., audits versus investigations).</p>	1	\$29,581,490,253
<b>Total</b>	<b>4</b>	<b>\$68,892,716,891</b>

## Appendices

# Reports with Unimplemented Recommendations for Management Improvement or Disallowed Costs Owed

The following table lists all OIG reports issued prior to this semiannual reporting period with recommendations that have not yet been fully implemented (as of March 31, 2023). For identification of each recommendation made before March 31, 2023, see <https://www.oig.dol.gov/recommendationdashboard.htm>.

Report Title; Report Number; Date Issued	Number of Unimplemented Recommendations	Disallowed Costs Owed
<b>Employee Benefits Security Administration</b>		
Limited-Scope Audits Provide Inadequate Protections to Retirement Plan Participants; Report No. 05-14-005-12-121; 09/30/14	1	\$0
EBSA Did Not Have the Ability to Protect the Estimated 79 Million Plan Participants in Self-Insured Health Plans from Improper Denials of Health Claims; Report No. 05-17-001-12-121; 11/18/16	1	\$0
<b>Employment and Training Administration</b>		
Investigative Advisory Report – Weaknesses Contributing to Fraud in the Unemployment Insurance Program; Report No. 50-15-001-03-315; 07/24/15	2	\$0
ETA Violated the Bona Fide Needs Rule and the Antideficiency Act; Report No. 26-17-002-03-370; 09/21/17	1	\$0
Experience Works, Inc. Misused More Than \$4 Million in SCSEP Grant Funds; Report No. 26-18-002-03-360; 09/28/18	1	\$0
Job Corps Should Do More to Prevent Cheating in High School Programs; Report No. 26-19-001-03-370; 09/25/19	2	\$0

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COVID-19: More Can Be Done to Mitigate Risk to Unemployment Compensation Under the CARES Act; Report No. 19-20-008-03-315; 08/07/20	2	\$0
Alert Memorandum: The Employment and Training Administration (ETA) Needs to Ensure State Workforce Agencies (SWA) Implement Effective Unemployment Insurance Program Fraud Controls for High Risk Areas; Report No. 19-21-002-03-315; 02/22/21	1	\$0
COVID-19: States Struggled to Implement CARES Act Unemployment Insurance Programs; Report No. 19-21-004-03-315; 05/28/21	3	\$0
Alert Memorandum: The Employment and Training Administration Needs to Issue Guidance to Ensure State Workforce Agencies Provide Requested Unemployment Insurance Data to the Office of Inspector General; Report No. 19-21-005-03-315; 06/16/21	3	\$0
Alert Memorandum: The Employment and Training Administration Does Not Require the National Association of State Workforce Agencies to Report Suspected Unemployment Insurance Fraud Data to the Office of Inspector General or the Employment and Training Administration; Report No. 19-21-006-03-315; 07/01/21	2	\$0
Unemployment Insurance Overpayments Related to Work Search Underscore the Need for More Consistent State Requirements; Report No. 04-21-001-03-315; 09/29/21	3	\$0
ETA Did Not Sufficiently Plan and Execute the American Apprenticeship Initiative Grant Program; Report No. 05-21-004-03-375; 09/30/21	4	\$0
COVID-19: Safety and Remote Learning Challenges Continue for Job Corps; Report No. 19-22-001-03-370; 11/12/21	3	\$0
Quality Control Review: Single Audit of the Center for Workforce Inclusion, Inc. for the Year Ended June 30, 2020; Report No. 24-22-001-50-598; 01/06/22 <sup>155</sup>	2	\$0
COVID-19: Delays in Providing Disaster Relief Jeopardize \$366 Million Disaster Worker Grant Program; Report No. 19-22-002-03-391; 01/28/22	1	\$0
Alert Memorandum: The ETA Needs to Ensure SWAs Report Activities Related to CARES Act UI Programs; Report No. 19-22-004-03-315; 08/02/22	2	\$0
Alert Memorandum: Potentially Fraudulent Unemployment Insurance Payments in High-Risk Areas Increased to \$45.6 Billion; Report No. 19-22-005-03-315; 09/21/22	2	\$0
COVID-19: ETA and States Did Not Protect Pandemic-Related UI Funds from Improper Payments Including Fraud or From Payment Delays; Report No. 19-22-006-03-315; 09/30/22	5	\$0
Quality Control Review: Single Audit of AARP Foundation for the year ended December 31, 2021; Report No. 24-22-004-50-598; 09/30/22 <sup>155</sup>	2	\$0

<sup>155</sup> The Quality Control Review Single Audit Report recommendations are addressed to the accounting firm; however, ETA funds the grant and are copied during report issuance, hence the addition to the ETA section of the table. The accounting firm will address the recommendations.

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<b>Mine Safety and Health Administration</b>		
MSHA Needs to Provide Better Oversight of Emergency Response Plans; Report No. 05-17-002-06-001; 03/31/17	6	\$0
MSHA Did Not Evaluate Whether Civil Monetary Penalties Effectively Deterred Unsafe Mine Operations; Report No. 23-19-002-06-001; 08/16/19	2	\$0
MSHA Can Improve its Pre-Assessment Conferencing Program; Report No. 05-19-001-06-001; 09/23/19	9	\$0
MSHA Needs to Improve Efforts to Protect Coal Miners from Respirable Crystalline Silica; Report No. 05-21-001-06-001; 11/12/20	3	\$0
MSHA Can Improve How Violations Are Issued, Terminated, Modified, and Vacated; Report No. 05-21-002-06-001; 03/31/21	9	\$0
<b>Office of the Assistant Secretary for Administration and Management</b>		
Ineffective Accounting for Sensitive Information Technology Hardware and Software Assets Places DOL at Significant Risk; Report No. 23-11-001-07-001; 03/31/11	6	\$0
FISMA Fiscal Year 2015: Ongoing Security Deficiencies Exist; Report No. 23-16-002-07-725; 09/30/16	1	\$0
FY 2018 FISMA DOL Information Security Report; Report No. 23-19-001-07-725; 03/13/19	2	\$0
Alert Memorandum: Security Vulnerability Relating to DOL Information Security Property; Report No. 50-19-002-07-725; 06/17/19	2	\$0
FY 2019 FISMA DOL Information Security Report: Implementation of Security Tools Hindered by Insufficient Planning; Report No. 23-20-002-07-725; 12/23/19	11	\$0
FY 2020 FISMA DOL Information Security Report: Progress Needed to Improve Risk Management and Continuous Monitoring Information Security Controls; Report No. 23-21-001-07-725; 12/22/20	17	\$0
FY 2021 FISMA DOL Information Security Report: Information Security Continuous Monitoring Controls Remain Deficient; Report No. 23-22-001-07-725; 01/28/22	15	\$0
FY 2022 DOL Made Progress in Implementing Geospatial Data Act Requirements, But More Needs to Be Done; Report No. 23-22-003-01-001; 09/30/22	3	\$0

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<b>Office of the Chief Financial Officer</b>		
Management Advisory Comments Identified in an Audit of the Consolidated Financial Statements for the Year Ended September 30, 2019; Report No. 22-20-005-13-001; 12/19/19	2	\$0
DOL Needs to Do More to Secure Employees' Personally Identifiable Information in the Travel Management System; Report No. 23-20-003-13-001; 09/10/20	2	\$0
Management Advisory Comments Identified in an Audit of the Consolidated Financial Statements for the Year Ended September 30, 2020; Report No. 22-21-005-13-001; 12/18/20	3	\$0
The U.S. Department of Labor Did Not Meet Requirements for Compliance with Payment Integrity Information Act for FY 2021; Report No. 22-22-007-13-001; 07/01/22	2	\$0
<b>Office of Federal Contract Compliance Programs</b>		
OFCCP Did Not Show It Adequately Enforced EEO Requirements on Federal Construction Contracts; Report No. 04-20-001-14-001; 03/27/20	1	\$0
<b>Office of the Secretary</b>		
DOL's IT Governance Lacked the Framework Necessary to Support the Overall Mission; Report No. 23-21-002-01-001; 09/30/21	5	\$0

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<b>Occupational Safety and Health Administration</b>		
OSHA Needs to Improve the Guidance for Its Fatality and Severe Injury Reporting Program to Better Protect Workers; Report No. 02-18-203-10-105; 09/13/18	1	\$0
OSHA Procedures for Issuing Guidance Were Not Adequate and Mostly Not Followed; Report No. 02-19-001-10-105; 03/28/19	4	\$0
Review of the Occupational Safety and Health Administration's Referral to and Reclamation of Debt from the U.S. Department of the Treasury; Report No. 22-20-006-10-001; 03/16/20	1	\$0
Region IX Whistleblower Protection Program Complaints Were Not Complete or Timely; Report No. 02-21-001-10-105; 11/23/20	1	\$0
COVID-19: Increased Worksite Complaints and Reduced OSHA Inspections Leave U.S. Workers' Safety at Increased Risk; Report No. 19-21-003-10-105; 02/25/21	1	\$0
OSHA's Diminished Enforcement Left More Workers at Risk for Exposure to Silica; Report No. 02-21-003-10-105; 09/29/21	2	\$0
COVID-19: To Protect Mission Critical Workers, OSHA Could Leverage Inspection Collaboration Opportunities with External Federal Agencies; Report No. 19-22-003-10-105; 03/31/22	2	\$0
<b>Office of Workers' Compensation Programs</b>		
OWCP'S Efforts to Detect and Prevent FECA Improper Payments Have Not Addressed Known Weaknesses; Report No. 03-12-001-04-431; 02/15/12	1	\$0
Alert Memorandum: The Office of Workers' Compensation Programs' Workers' Compensation Medical Bill Process System Data Were of Undetermined Reliability; Report No. 23-22-002-04-001; 09/26/22	1	\$0
<b>Wage and Hour Division</b>		
COVID-19: The Pandemic Highlighted the Need to Strengthen Wage and Hour Division's Enforcement Controls; Report No. 19-21-008-15-001; 09/30/21	4	\$0
<b>Totals</b>	<b>162</b>	<b>\$0</b>

## Appendices

# Investigative Statistics

	Division Totals	Total
<b>Investigative Reports Issued / Cases Closed</b> (includes investigative reports issued, case closing reports, and matters referred for possible civil and/or administrative action):		131
Program Fraud Labor Racketeering	119 12	
<b>Cases Opened:</b>		163
Program Fraud Labor Racketeering	153 10	
<b>Cases Referred for Prosecution</b> (each case is measured as a singular statistic and may include more than one person or business entity):		125
Program Fraud Labor Racketeering	115 10	
<b>Cases Referred for Administrative/Civil Action</b> (each case is measured as a singular statistic and may include more than one person or business entity):		58
Program Fraud Labor Racketeering	57 1	
<b>Persons Referred to the Department of Justice for Criminal Prosecution</b> (includes the number of individuals and business entities referred for prosecution):		128
Program Fraud Labor Racketeering	113 15	
<b>Persons Referred to State and Local Prosecuting Authorities for Criminal Prosecution</b> (includes the number of individuals and business entities referred for prosecution):		27
Program Fraud Labor Racketeering	26 1	
<b>Indictments and Criminal Informations That Resulted from Any Prior Referral to Prosecuting Authorities</b> (includes sealed and unsealed indictments):		233
Program Fraud Labor Racketeering	216 17	
<b>Indictments</b> (includes sealed and unsealed indictments):		233
Program Fraud Labor Racketeering	216 17	
<b>Convictions:</b>		270
Program Fraud Labor Racketeering	236 34	
<b>Statutory Debarments:</b>		2
Program Fraud Labor Racketeering	1 1	



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<b>Recoveries, Cost-Efficiencies, Restitutions, Fines/Penalties, Forfeitures, and Civil Monetary Actions:</b>		\$74,404,283
Program Fraud	\$48,983,270	
Labor Racketeering	\$25,421,012	

<b>Recoveries</b> (the dollar amount/value of an agency's action to recover or to reprogram funds or to make other adjustments in response to OIG investigations):		\$5,481,078
<b>Cost-Efficiencies</b> (the one-time or per annum dollar amount/value of management's commitment, in response to OIG investigations, to utilize the government's resources more efficiently):		\$1,425,661
<b>Restitutions/Forfeitures</b> (the dollar amount/value of restitutions and forfeitures resulting from OIG criminal investigations):		\$57,765,718
<b>Fines/Penalties</b> (the dollar amount/value of fines, assessments, seizures, investigative/court costs, and other penalties resulting from OIG criminal investigations):		0
<b>Civil Monetary Actions</b> (the dollar amount/value of forfeitures, settlements, damages, judgments, court costs, and other penalties resulting from OIG criminal investigations):		\$9,731,827
<b>Total</b>		<b>\$74,404,283</b>

# Peer Review

*The following meets the requirement under Section 5(1)(14)(A)–(B) of the Inspector General Act of 1978, as amended, and Section 989C of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) that the Inspectors General include their peer review results as an appendix to each semiannual report.*

### **Peer Review of DOL OIG Audit Function**

The U.S. Department of Health and Human Services OIG conducted a peer review of the system of quality control for DOL-OIG’s audit function for the period ending September 2021. The peer review report, which was issued on September 15, 2022, resulted in an opinion that the system of quality control was suitably designed and provided reasonable assurance of DOL-OIG’s conforming to professional standards in the conduct of audits. The peer review covered audit work performed during the unprecedented COVID-19 pandemic, and DOL-OIG received a clean report with a rating of pass with no recommendations.

## Appendices

### OIG Hotline

*The OIG Hotline provides a communication link between the OIG and persons who want to report alleged violations of laws, rules, and regulations; mismanagement; waste of funds; abuse of authority; or danger to public health and safety. During the reporting period October 1, 2022, through March 31, 2023, a total of 5,876 complaints were opened in the OIG Hotline’s complaint management system. The majority of these complaints involve concerns regarding COVID-19-related unemployment benefits. Since the start of the pandemic, the OIG’s Office of Investigations referred 29,622 complaints to the appropriate State Workforce Agency for further review and/or action in response to complaints regarding alleged fraud involving COVID-19-related unemployment benefits. During this reporting period, the OIG Hotline received additional complaints that are awaiting processing.*

*\*The total number of complaints referred during this reporting period exceeds the number of complaints received as the OIG Hotline is continuing to analyze and process a backload of complaints regarding alleged fraud involving COVID-19-related unemployment benefits.*

Complaints Received (by method reported)	Totals
Telephone	215
E-mail/Internet	5,634
Mail	25
Fax	0
Walk-In	2
<b>Total</b>	<b>5,876</b>

Contacts Received (by source)	Totals
Complaints from Individuals or Non-Governmental Organizations	1,891
Complaints/Inquiries from Congress	6
Referrals from GAO	2
Complaints from Other DOL Agencies	11
Complaints from Other (non-DOL) Government Agencies	3,966
<b>Total</b>	<b>5,876</b>

Disposition of Complaints	Totals
Referred to OIG Components for Further Review and/or Action	123
Referred to DOL Program Management for Further Review and/or Action	287
Referred to Non-DOL Agencies/Organizations	118
No Referral Required/Informational Contact	232
<b>Total</b>	<b>760</b>

# Fiscal Year 2023 Audit Workplan

Annotated with “In-Progress” for those projects that are ongoing.

### **BUREAU OF LABOR STATISTICS (BLS)** **Discretionary Audit**

- 1. BLS Survey Response Rate – In Progress.** BLS is the principal federal agency responsible for measuring labor market activity, working conditions, and price changes in the nation’s economy. The President, Congress, federal policymakers, public institutions, and private citizens use the economic information developed by BLS to guide and support decision-making. According to a 2013 study by the National Research Council, “[f]or many household surveys in the United States, response rates have been steadily declining for at least the past two decades.” BLS’s Fiscal Year (FY) 2021 operating plan acknowledges survey response rates have declined over the last few years, and the OIG work to date confirms overall BLS survey response rates have been declining. It is vital for BLS to incorporate new methodologies and technology into its data collection process to ensure expected response rates and reduced respondent burden. A decline in response rates could increase data collection costs and affect data quality, which may result in unreliable economic information developed by BLS. This audit focuses on how efficiently and effectively BLS is able to obtain data necessary to produce the economic information it is required to produce, and if there are other sources to obtain the necessary data.

### **BENEFITS REVIEW BOARD (BRB)** **Discretionary Audit**

- 2. BRB Backlog of Black Lung and Longshore and Harbor Worker Claims.** The Benefit Review Board (BRB) decides appeals from the Office of Administrative Law Judges (OALJ) under the Black Lung Benefits Act, the Longshore and Harbor Workers’ Compensation Act, and the Longshore and Harbor Workers’ Compensation Act extensions, including the Defense Base Act (DBA). In FY 2020 and FY 2021, there was a large influx of DBA cases, which the Department predicts will continue for FY 2022 and FY 2023. According to Department officials, this influx of DBA cases is the most important new challenge for the OALJ and BRB. In addition, OALJ expects to increase production with additional budget and full-time employees. In FY 2022, the BRB had a backlog of 648 Black Lung appeal cases with an average processing time of 16.8 months and a backlog of 97 Longshore/DBA appeal cases with an average processing time of 12.5 months. The continued increase of Longshore/DBA appeal cases since FY 2020, along with a continued influx of new Black Lung and Non DBA Longshore appeal cases, could impact BRB appeal case processing times and increase BRB’s backlog of appeal cases, delaying claimants from receiving vital benefits. This audit will focus on BRB’s efforts to expeditiously adjudicate Black Lung and Longshore (DBA and Non DBA) appeals and reduce the backlog of appeal cases.

## EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA) Discretionary Audit

- 3. EBSA Enforcement.** During FY 2022, EBSA established health care initiatives to focus limited resources on enforcement actions related to the sustainability and fraud of Multiple Employer Welfare Arrangements (MEWA) and emergency services claims, as well as provisions of the American Rescue Plan Act of 2021, or ARPA (e.g., the continuation of coverage benefits through the Consolidated Omnibus Budget Reconciliation Act of 1985). EBSA enforcement initiatives seek to detect and correct violations of the Employee Retirement Income Security Act of 1974, among other federal law violations, and to obtain relief for those violations. This audit will focus on the effectiveness of EBSA's enforcement efforts to detect and correct health-related violations, as well as obtaining relief for those violations.

## EMPLOYMENT AND TRAINING ADMINISTRATION (ETA) Mandatory Audits

### Job Corps

- 4. COVID-19: Job Corps Training Program Performance during the Pandemic.** In March 2020, the COVID-19 pandemic forced Job Corps to quickly shut down its centers and send most of its 29,000 students home. As with most other schools in the United States, Job Corps had not planned for a transition to a distance learning program when in-person instruction abruptly ceased. We previously reported that Job Corps' inability to deliver hands-on training delayed students' progress and completions, noting that no students completed technical skills training from April 2020 to April 2021. This audit will focus on the outcomes for students who received remote learning during the pandemic.
- 5. COVID-19: Ensuring Job Corps Funds Were Properly and Efficiently Used during the COVID-19 Pandemic.** In March 2020, during the COVID-19 pandemic, Job Corps shut down 121 centers and sent almost 29,000 students home. From about March 2020 to April 2021, student enrollment plummeted 56 percent, and the number of students who completed trades training also dropped to zero. For FY 2020, Job Corps received approximately \$1.7 billion in funding, the same amount as in prior years. While Job Corps allowed centers to use budget underrun funds to purchase supplies and equipment to deploy remote learning and to ensure student and staff safety when it reopened centers, there is a risk all these funds were not used appropriately or efficiently. This audit will review how Job Corps' funds were spent from March 2020 through December 2021.
- 6. Job Corps Minor Students.** Job Corps' participants upon entry into the program are ages 16 to 24. The significant age range poses a number of challenges. Given the occurrence of sexual assaults and harassment that occur on center campuses, there is an inherent risk with having adults up to 27 years of age cohabitate with minors as young as 16 years old. Some Job Corps minors may: (1) have been



# OIG FY 2023 Audit Workplan

encouraged to enroll by their parents or guardians, (2) not be in the program of their own volition, (3) not take the program seriously, and (4) disrupt program instruction, which impacts the learning of other students. Furthermore, minor students may not meet minimum age requirements for certain trades, affecting their ability to obtain employment in certain fields, such as plumbing and electrical trades, possibly leading to lower program outcomes and not meeting the intent of the Job Corps program. This audit will focus on whether Job Corps took appropriate measures to ensure the safety of, mitigate program disruptions from, and meet the program's intent for its minor students.

## Discretionary Audits

### ETA Contract and Grant Programs

7. **COVID-19: ETA Grantee Sub-Recipient – In Progress.** In March 2020, the COVID-19 pandemic caused many of ETA's job training programs to cease operation. This interrupted participants' job training, hence potentially preventing them from completing their training and getting a job in the areas in which they were trained. This audit will focus on how effectively ETA ensured these funds were used as intended.
8. **COVID-19: ETA's Administration of Grant Funds Provided under the CARES Act.** ETA obligated more than \$15 billion in federal grant funds, of which \$345 million was specifically provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Over the past decade, we reported numerous issues with ETA's management of federal grant funds not achieving performance goals and identified upwards of \$489 million in grant funds that were inefficiently used. This audit will focus on how effectively ETA ensured these funds were used as intended.
9. **ETA's Administration of Disaster Dislocated Worker Grants.** Public Law 116–20 provided ETA with an additional \$50 million for the dislocated workers assistance national reserve for necessary expenses directly related to the consequences of Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, wildfires, and earthquakes that occurred in calendar year (CY) 2018, and tornadoes and floods that occurred in CY 2019. Dislocated Worker Grants (DWG) provide resources to states and other eligible applicants to respond to large, unexpected layoff events causing significant job losses. Additionally, disaster DWGs provide funding to create temporary employment opportunities to assist with clean-up and recovery efforts, and employment and training services to eligible grant participants. A prior OIG DWG report found ETA provided minimal oversight of its state grantees and needs to do more to ensure grantees help local areas to restore communities timely; ensure out of work participants receive expeditious disaster relief assistance; maximize the number of participants who obtain employment as intended by the grants; and ensure disaster relief funds are used efficiently and effectively. This audit will focus on the extent ETA properly administered the DWG program to provide assistance in the aftermath of the 2018 and 2019 disasters.

## Foreign Labor Certification

- 10. Effectiveness of ETA's Permanent Labor Certification Program (PERM) Application Processing Time.** The PERM program is based on the premise that employers will hire foreign workers only when: (1) there are insufficient U.S. workers able, willing, qualified, and available to accept the job opportunity in the area of intended employment; and (2) the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. When submitting a PERM application, the employer is required to execute recruiting efforts for U.S. workers within 6 months of filing an application. Based on August 2022 data, once the employer submits the application to ETA, the average processing time to receive an approved application from DOL is between 8 and 11 months, depending on ETA's review process. Due to the lengthy average processing time for applications, there is little assurance by the time a foreign worker is approved for permanent resident status that a U.S. worker was still not available and able to perform the same job. This audit will focus on ETA's PERM application review process and effectiveness in ensuring U.S. workers were still not available and able to perform the job.
- 11. Effectiveness of ETA's Approval of H-2A Applications.** The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform agricultural labor or services of a temporary or seasonal nature. In order to receive the temporary employees, employers self-attest (1) there are no sufficient able, willing, and qualified U.S. workers available to perform the temporary and seasonal agricultural employment, and (2) the employment of H 2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. This audit would focus on the effectiveness of ETA's approval process and comparing the self-attestations to supporting documentation.

## Unemployment Insurance (UI) Program

- 12. COVID-19: Audit of ETA's Oversight of UI Integrity of CARES Act Programs – In Progress.** States are responsible for administering their UI programs while DOL provides oversight and direction for the UI system nationwide. When Congress, through the CARES Act, expanded UI for workers who were suddenly unemployed because of the pandemic, states were already processing a substantial influx in UI claims. States then had to implement three new UI programs, resulting in additional major challenges. Resources stretched, states attempted to pay benefits quickly, and the risk of fraud and increased improper payments rose significantly. As of March 31, 2021, states and territories had drawn down a total of approximately \$495.2 billion to administer the new UI programs—98 percent of the total drawdown funding (\$505.6 billion) for all CARES Act programs. Over the years, ETA has implemented various program integrity and fraud reduction initiatives; however, these initiatives have offered only a partial solution. This audit evaluates ETA's role in managing the integrity of the UI programs under the CARES Act, including working with states and partners to identify and share best practices and data to reduce fraud.

- 13. COVID-19: DOL’s Oversight of Emergency UI Administrative Grants to States – In Progress.** The Families First Coronavirus Response Act provided \$1 billion to DOL to provide emergency administration grants to state UI agencies for the administration of their unemployment compensation programs. Administrative resources were critical to delivering an effective UI program that was relied upon by millions of American taxpayers, especially during the pandemic. Funds provided through these emergency administrative grants could only be used for the administration of the UI program and were not available for the payment of UI benefits. This audit focuses on the Department’s monitoring of the emergency administration grants and if these funds were accurately tracked and reported, at both the state and federal level.
- 14. COVID-19: Audit of States’ Information Technology Systems Capability in Processing Unemployment Insurance Claims – In Progress.** From March 28, 2020, to August 1, 2020, unemployed workers submitted more than 57 million initial UI claims and another 502 million continued claims under regular and CARES Act UI programs. Many states and U.S. territories used antiquated information technology (IT) systems—some dating from the 1970s—to process the claims influx and implement the new CARES Act programs. The need for IT modernization had already become apparent during the economic downturn where some states’ systems failed completely. In October 2020, the National Association of State Workforce Agencies (NASWA) UI IT Support Center reported only 22 states had modernized their systems. Using outdated IT systems can cause payment delays and can also increase improper payments including fraud. This audit will determine to what extent the capability of states’ IT systems impacted their ability to process timely and accurate UI claims.
- 15. COVID-19: Audit of CARES Act Impact on Non-traditional Claimants – In Progress.** With the passage of the CARES Act in March 2020, the Department’s UI program was expanded to provide emergency UI benefits to workers unemployed due to COVID-19. This included non-traditional claimants, such as self-employed workers, independent contractors, and individuals with limited work histories. While total expenditure of UI benefits approached \$500 billion by mid-2021, it is unclear how effective ETA and its state partners have been in delivering this assistance to non-traditional claimants. Our audit will determine if DOL and State Workforce Agencies’ efforts ensured non-traditional claimants received UI benefits as intended under the CARES Act and the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act).
- 16. COVID-19: Audit of DOL and States’ Efforts to Detect and Recover Improper Payments – In Progress.** Under the CARES Act, ETA was required to implement large-scale changes to its existing UI system, including establishing six new programs. The new programs were intended to provide expanded UI benefits to workers who were suddenly jobless as a direct result of the COVID-19 pandemic. Given the challenge of rapidly implementing new programs during a crisis situation, ETA and states faced an additional hurdle of using controls, previously identified as weak and deficient in published OIG reports and alert memorandums, to process more than 77 million seasonally adjusted initial jobless claims and 571 million seasonally adjusted continued claims over the course of

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the pandemic's first year. According to the OIG's conservative estimate as of January 2, 2021, such circumstances increased the risk of UI improper payments (including fraud, waste, and abuse) to exceed a total of \$40 billion. This audit focuses on determining if ETA ensured states had adequate controls to prevent, detect, and recover improper payments stemming from UI benefits under the CARES Act and the Continued Assistance Act.

- 17. COVID-19: Audit of States' Use of Staffing to Support Implementation of CARES Act UI Programs – In Progress.** From March 2020, the unprecedented high rate of unemployment resulting from the COVID-19 pandemic led to challenges for states in processing UI claims, completing mandatory reporting, and performing required overpayment detection procedures due to insufficient staffing. DOL and states found themselves unprepared for the circumstances surrounding COVID-19 and struggled to implement CARES Act UI programs while unemployed workers faced lengthy delays in receiving UI benefits. The CARES Act provided states with temporary "emergency" flexibility through December 31, 2020, for additional staffing and to otherwise quickly process unemployment claims, and subsequent legislation extended these CARES Act UI provisions. This audit focuses on DOL's efforts to ensure states' staffing supported the implementation of UI programs under the CARES Act and its amendments.
- 18. COVID-19: Audit of the Temporary Full Federal Funding Program – In Progress.** Under the CARES Act, the Temporary Full Federal Funding (TFFF) program paid the cost of the first week of an eligible claimant's UI benefits for states with no waiting week. The program also paid the cost of the first week for those who chose to waive their waiting week requirements. This flexibility allowed eligible claimants to receive their benefits quickly and get the much-needed relief to offset the effects of the COVID-19 pandemic. As of July 2021, ETA had provided states more than \$6.8 billion through the TFFF program. This audit focuses on DOL's efforts to ensure states met program requirements and used the TFFF program as intended by the UI provisions of the CARES Act, the Continued Assistance Act, and ARPA.
- 19. COVID-19: Emergency Unemployment Relief for Government Entities and Nonprofit Organizations – In Progress.** The CARES Act created the Emergency Unemployment Relief for Government Entities and Nonprofit Organizations (EURGENO) program. It provided funds to reimburse governmental entities and certain nonprofits for amounts paid for unemployment between March 13, 2020, and September 6, 2021. This audit will determine to what extent ETA and states effectively executed the EURGENO program and ensured compliance with the UI provisions of the CARES Act and its amendments.
- 20. COVID-19: Short-Time Compensation (STC) Program – In Progress.** Passage of the CARES Act expanded UI program benefits to new and existing programs, including the STC program. The CARES Act included provisions that increased the federal reimbursement to 100 percent of benefits for states that have an STC program in their laws and provided for a 50 percent reimbursement for states that do not have an STC program in their laws but agreed to operate a program on a temporary basis.

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The STC program acts as a work share program, with employers reducing the number of hours offered to employees and the state making up the difference in the form of benefit payments. The CARES Act provided for an estimated \$2.2 billion for benefit reimbursements and administrative costs. Twenty-seven states have participated in the program and reported benefit reimbursement payments of approximately \$1.1 billion as of July 31, 2021. This audit will determine how states implemented the STC program for the benefit of unemployed individuals and to meet the intent of the program.

- 21. COVID-19: Mixed Earners Unemployment Compensation – In Progress.** The Mixed Earners Unemployment Compensation (MEUC) program is a new temporary federal program under the Continued Assistance Act and ARPA. It provided additional benefits to certain self-employed individuals who are available for work for the week ending January 2, 2021, through the week ending September 4, 2021. This audit will determine how states implemented the MEUC program for the benefit of unemployed individuals and to meet the intent of the program.
- 22. Pandemic Response Accountability Committee (PRAC) – DOL Programs – Case Study Project – In Progress.** The focus of this oversight project will be to identify the federal pandemic response program funds provided to select geographic areas, identify the purpose of those funds, and determine if the federal program spending aligned with the intended goals and objectives. This project is under the direction of the Pandemic Response Accountability Committee and is being conducted in coordination with nine other OIGs.
- 23. COVID-19: Audit of DOL and States Oversight of UI Claimants Return to Work.** The CARES Act and its related extensions provided additional UI benefits to claimants who lost their employment due to the COVID-19 pandemic. As a result, numerous states ended their participation in the enhanced federal jobless benefits program ahead of its expiration, citing complaints from businesses that claimed they were unable to find workers likely due to financial incentives that caused claimants to refuse suitable employment offers. This audit will focus on DOL's and states' compliance with return to work provisions under the CARES Act.
- 24. COVID-19: ETA and States' Efforts to Address Multistate UI Claimants – In Progress.** In September 2022, we alerted DOL to over \$45 billion we had identified in potential fraud paid in four high-risk areas. Multistate claimants were the largest high-risk area. Through ETA, the OIG provided states with our underlying methodology as well as specific claimant information for follow-up action. This audit will examine the extent to which ETA and states have taken action to follow up on potentially fraudulent CARES Act UI claims identified and referred by the OIG.
- 25. COVID-19: ETA and States' Efforts to Address UI Claimants Filing with Social Security Numbers of Deceased Persons – In Progress.** In September 2022, we alerted DOL to over \$45 billion we had identified in potential fraud paid in four high-risk areas. One high-risk area was UI claimants filing with Social Security numbers (SSN) of deceased persons. Through ETA, the OIG provided states with our underlying methodology as well as specific claimant information for follow-up action. This audit will



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examine the extent to which ETA and states have taken action to follow up on potentially fraudulent CARES Act UI claims filed with SSNs of deceased persons identified and referred by the OIG.

- 26. COVID-19: ETA and States' Efforts to Address UI Claimants Filing with Social Security Numbers of Federal Prisoners – In Progress.** In September 2022, we alerted DOL to over \$45 billion we had identified in potential fraud paid in four high-risk areas. One high-risk area was UI claimants filing with SSNs of federal prisoners. Through ETA, the OIG provided states with our underlying methodology as well as specific claimant information for follow-up action. This audit will examine the extent to which ETA and states have taken action to follow up on potentially fraudulent CARES Act UI claims filed with SSNs of federal prisoners identified and referred by the OIG.
- 27. COVID-19: ETA and States' Efforts to Address UI Claimants Filing with Suspicious Email Accounts – In Progress.** In September 2022, we alerted DOL to over \$45 billion we had identified in potential fraud paid in four high-risk areas. One high-risk area was UI claimants filing with suspicious email accounts. Through ETA, the OIG provided states with our underlying methodology as well as specific claimant information for follow-up action. This audit will examine the extent to which ETA and states have taken action to follow up on potentially fraudulent CARES Act UI claims filed with suspicious email accounts identified and referred by the OIG.
- 28. COVID-19: Impact of Waivers on UI Overpayments, Fraud Investigations, and Recoveries.** On February 7, 2022, DOL issued Unemployment Insurance Program Letter (UIPL) 20-21, Change 1, regarding states' ability to waive the recovery of certain UI overpayments under the CARES Act program. There are concerns these waivers could adversely impact the pursuit of fraud in the UI program. Also, the waivers could potentially allow for fraudulent CARES Act UI payments to go uncollected. This audit will determine the impact of waivers on UI overpayments, fraud investigations, and recoveries.
- 29. American Rescue Plan Act Equity Grants.** ARPA provided \$2 billion in funding to DOL to prevent and detect fraud, promote equitable access, ensure timely payment of benefits, and reduce backlogs. This includes \$260 million in grants to improve claimant outreach and customer service processes, implement strategies to reduce backlog, and improve access for workers in communities that may historically experience barriers. These first-of-their-kind grants, referred to as "Equity Grants," will provide funding for states to improve public awareness and service delivery as DOL seeks to address potential racial and ethnic disparities in the administration and delivery of UI benefits in some states. This audit will focus on DOL's and states' effectiveness in addressing the potential racial and ethnic disparities in the UI program.

### **MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) Discretionary Audits**

- 30. COVID-19: Impact of COVID-19 MSHA Mandatory Inspections – In Progress.** MSHA conducts certain mandatory inspections to help ensure miners are working in safe environments. Because of

## OIG FY 2023 Audit Workplan

workforce limitations during the COVID-19 pandemic, the number and/or quality of mandatory MSHA inspections may have declined, putting miners at risk. Between January and December 2020, MSHA conducted 19,487 mandatory inspections at 12,684 mines. This audit will determine if COVID-19 impacted MSHA's ability to effectively conduct mandatory inspections.

- 31. Mine Rescue Response Plan.** When disaster strikes, a well-prepared mine rescue effort can mean the difference between life and death for trapped miners. Insufficient personnel, equipment, or training could hamper MSHA's ability to respond quickly and effectively in mine rescue situations. Prior OIG work found MSHA had not provided adequate oversight of mine emergency response plans, which included planning by both mine operators and MSHA. This audit will assess MSHA's preparedness in responding to emergencies requiring mine rescue operations.

### OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP) Discretionary Audits

- 32. OFCCP's Enforcement of Equal Employment Opportunity Obligations.** OFCCP is charged with protecting America's workers by enforcing equal employment opportunity and affirmative action obligations of employers that do business with the federal government. OFCCP focuses on identifying patterns of systemic discrimination in employer personnel practices, including hiring, promotion, and compensation, when it conducts compliance evaluations of contractors. OFCCP also monitors contractors' and subcontractors' compliance with affirmative action obligations. With more than \$1 trillion allocated in the Infrastructure Investment and Jobs Act, OFCCP will play a vital role in ensuring these federal investments create good jobs that provide equal opportunity to all. This audit will focus on the effectiveness of OFCCP's enforcement of anti-discrimination and affirmative action obligations through compliance evaluations.

### OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) Discretionary Audits

- 33. COVID-19: OSHA's Adequacy of Plans and Use of Funds under the American Rescue Plan Act – In Progress.** With increased concern regarding the safety and health of workers during the COVID-19 pandemic, OSHA has received a significant rise in complaints. We previously reported OSHA received 15 percent more complaints from February to October 2020 than during a similar period in 2019. To address the continued impact of COVID-19 on the economy, public health, state and local governments, individuals, and businesses, on March 11, 2021, Congress passed ARPA. ARPA provided relief to OSHA in the amount of no less than \$100 million. This audit focuses on whether OSHA adequately developed plans to use ARPA funds to carry out COVID-19 related worker protection activities, and whether OSHA has controls in place to effectively use ARPA funds to protect workers from COVID-19.

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- 34. Use of Complainant Interviews in OSHA Complaint Inspections – Completed.** OSHA conducts approximately 9,000 complaint inspections annually and issues citations in 24 percent of those inspections. Inspectors are not required to interview complainants at any point during the inspection process, which could result in OSHA having little interaction with complainants and witnesses during complaint inspections. This audit focuses on OSHA's use of complainant and witness testimony during a complaint inspection to ensure the complaint or referral was addressed adequately.
- 35. Rising Injury Rates among Online Retailers' Warehouse Workers – In Progress.** High-speed fulfillment of online orders has become the industry standard, with large online retailers promising free 2-day, next-day, and even same-day deliveries of orders. To accomplish such speedy deliveries, warehouses around the nation have been forced to work ever faster, and some have reported increased pressure to meet production quotas. This may be having a significant impact on the health and safety of warehouse workers. For example, injury rates among warehouse workers have skyrocketed, with one organization reporting that injury rates at a leading online retailer are 80 percent higher and also more severe than at other online retailers' warehouses. The State of California recently passed legislation to help protect warehouse workers by empowering state safety regulators to take additional enforcement actions. This audit will review what, if any, actions OSHA has taken to address the rising injury rates and severity of injuries at online retailers' warehouse facilities.
- 36. COVID-19: OSHA Future Pandemic Planning Adequacy.** ARPA provides the amount of no less than \$100 million for OSHA to conduct worker protection activities concerning COVID-19. The COVID-19 pandemic raised specific concerns about the safety and health of workers. Since the start of the pandemic, OSHA received numerous complaints and requests from Congress and other stakeholders to issue an Emergency Temporary Standard (ETS). OSHA issued numerous pieces of guidance; however, the guidance is not enforceable and cannot operate in lieu of an ETS. OSHA intended to spend a portion of the ARPA funds to provide the necessary staff and technical expertise on the development of an ETS for COVID-19 and a permanent standard on infectious disease standards. This audit will (1) determine if OSHA has plans to issue an ETS covering other high-risk industries, (2) review the effectiveness OSHA's plans for addressing future pandemics, and (3) evaluate other actions OSHA has taken to safeguard workers in high-risk industries during the ongoing pandemic.
- 37. COVID-19: OSHA Effectiveness of the National Emphasis Program (NEP).** Due to the COVID-19 pandemic, OSHA received a surge of complaints while garnering the attention of Congress, labor unions, and the media with requests to act swiftly on behalf of the 130 million workers at more than 8 million worksites nationwide whom OSHA is responsible for protecting. OSHA launched the NEP on March 12, 2021, to focus on companies that put the largest number of workers at serious risk of contracting COVID-19, and on employers that engage in retaliation against employees who complain about unsafe or unhealthful conditions or exercise other rights under the Occupational Safety and Health (OSH) Act. The audit will focus on OSHA's efforts to administer the NEP to ensure employees in high-hazard industries or work tasks are protected from the hazard of contracting COVID-19 and from retaliation.

- 38. COVID-19: OSHA Effectiveness of Whistleblower Complaint Corrective Actions.** OSHA received a 30 percent increase in whistleblower complaints during the early months of the COVID-19 pandemic. OSHA enforces whistleblower provisions found in 25 statutes that protect employees from retaliation for reporting unsafe or unhealthful conditions or otherwise exercising their rights provided under the statutes. Prior to the pandemic, OSHA averaged 9 months to close a whistleblower complaint investigation, already much longer than the 30-, 60-, or 90-day statutory timeframes. Potential for even greater delays exist with the significant increase of whistleblower complaints received during the pandemic and decrease in the Whistleblower Protection Programs' full-time employment. These delays can leave workers to suffer emotionally and financially. The audit will focus on OSHA's efforts to implement corrective actions that improve the Whistleblower Protection Program to ensure workers are protected from retaliation.

### **OFFICE OF LABOR MANAGEMENT STANDARDS (OLMS) Discretionary Audit**

- 39. OLMS Compliance Program Targeting Strategy.** OLMS conducts audits of labor unions to detect embezzlements and promote compliance with the Labor Management Reporting and Disclosure Act of 1959. OLMS developed a methodology to focus its audit selection on labor unions whose metrics suggest potential criminal activity (e.g. embezzlement from unions). In FY 2009, OLMS established a performance goal to increase the rate at which audits of unions result in the opening of a criminal investigation (the "fallout" rate). In FY 2021, OLMS fell short of its performance goal in this area, achieving a fallout rate of 15.25 percent despite a target rate of 16.75 percent. This audit will focus on the effectiveness of OLMS's targeting strategy in increasing criminal investigations and reducing criminal activity.

### **OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT (OASAM) Mandatory Audit**

- 40. Federal Information Security Management Act (FISMA) Audit – Annual – In Progress.** In performing its various missions, DOL collects and processes sensitive information through approximately 77 major information systems. FISMA recognizes the significant risks involved with information IT and its important role in fulfilling agency missions. As such, FISMA sets a framework for securing all federal government systems by developing security standards and methods for measuring the effectiveness of those security standards. This audit will focus on the status of the DOL Information Security Program in implementing an effective framework to secure DOL information systems.

## Discretionary Audits

- 41. IT Modernization – In Progress.** IT modernization is critical to preventing security breaches, excessive costs, missed deadlines, and low-quality IT products and services. DOL recently transitioned to an IT Shared Services model, providing OASAM greater control over IT and IT funding. This audit focuses on the management of IT modernization efforts across the Department, including software integration, legacy systems, and shared services.
- 42. DOL IT Contingency Planning.** IT Contingency Plans are a key component for the recovery and continuity of operations when disasters (natural disasters or malicious actors) strike an agency or its IT. The Office of the Chief Information Officer (OCIO) is now the Authorizing Official of DOL's 65 IT systems and is responsible for the continuity of these mission critical systems. As such, the requirements for contingency plan testing of all those systems now falls to the OCIO staff. Prior FISMA work indicated the OCIO has problems with contingency planning, including not ensuring sufficient backup testing of its systems. With incomplete or impartial contingency planning of such a large number of systems under OCIO responsibility across a variety of agencies and geographic areas, the potential for substantial system downtime or non-recovery of data when a contingency arises is elevated. The lack of availability of DOL systems may impact the Department's ability to fulfill its critical missions and legislative requirements. This audit will focus on what efforts OCIO is undertaking to maintain and test the contingency plans across all DOL systems, with particular focus on the 65 systems under OCIO direct control.
- 43. DOL Wireless Network Environment – In Progress.** DOL's wireless network has been deployed across all 50 states at approximately 400 locations within all DOL owned and associated buildings for DOL's 20,000 users. Wireless networks are being deployed to replace DOL's current hardwired (cables) infrastructure. Wireless technology inherently contains high risks if not properly configured or maintained as the information can be received by anyone within the range of the wireless device. Without operating secure wireless networks that include boundary controls between networks and active monitoring, DOL is vulnerable to the breach of its high-value IT assets, which could cripple DOL operations and result in the loss of highly sensitive data. Our audit will focus on whether DOL deployed and operated a secure wireless network infrastructure across all of its agencies and supported and/or funded mission sites. We intend to not only focus on the policy and procedures but also test the effectiveness of DOL's implementation through technical testing.

## OFFICE OF THE CHIEF FINANCIAL OFFICER (OCFO) Mandatory Audits

- 44. DOL Consolidated Financial Statements Audit – Annual – In Progress.** We will determine if DOL's consolidated financial statements present fairly, in all material respects, the financial position of DOL as of September 30, 2023. We will consider DOL's internal controls over financial reporting and test DOL's compliance with applicable laws, regulations, contracts, and grant agreements that have a direct and material effect on the consolidated financial statements.



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- 45. Review of DOL's Improper Payment Reporting in the Annual Financial Report – Annual – In Progress.** In FY 2021, the UI program and Federal Employees' Compensation Act (FECA) reported outlays of \$413 billion and \$2.9 billion, respectively, with an estimated improper payment rate of 18.71 percent and 2.7 percent, respectively. Based on DOL's risk assessments, the UI and FECA programs continue to be considered the most susceptible to improper payments of all DOL programs. This audit will determine if DOL complied with the Payment Integrity Information Act of 2019, which required DOL to: (1) conduct a program specific risk assessment for each required program or activity; (2) publish and meet annual reduction targets for each program assessed to be at risk for improper payments; and (3) report information on the efforts of each program to reduce improper payments.

### OFFICE OF WORKERS' COMPENSATION PROGRAMS (OWCP) Mandatory Audits

- 46. Report Relating to the Federal Employees' Compensation Act Special Benefit Fund – Annual – In Progress.** We will determine if: (1) the Schedule of Actuarial Liability, Net Intra-Governmental Accounts Receivable, and Benefit Expense was fairly presented for the year ending September 30, 2023; and (2) internal controls over financial reporting related to the Schedule were in compliance with laws and regulations that could have a direct and material effect on the Schedule.
- 47. Longshore and Harbor Workers' Compensation Act (LHWCA) Special Fund – Annual – In Progress.** We will determine if DOL's LHWCA Special Fund financial statements presented fairly, in all material respects, the financial position of the LHWCA Special Funds as of September 30, 2022.
- 48. District of Columbia Workmen's Compensation Act (DCCA) Special Fund Financial Statement Audits – Annual – In Progress.** We will determine if DOL's DCCA Special Fund financial statements presented fairly, in all material respects, the financial position of the DCCA Special Funds as of September 30, 2022.
- 49. FECA Statement on Standards for Attestation Engagements No. 18 – Annual – In Progress.** We will determine if DOL's Integrated Federal Employees' Compensation System transaction processing for application and general controls, as described in the report, were fairly presented, suitably designed, and effectively operating for the period October 1, 2022, through June 30, 2023.

### Discretionary Audits

- 50. Energy Employees' Claims Denials – In Progress.** From its inception to the end of FY 2020, the Energy Workers program awarded approximately 127,000 claimants' compensation and medical benefits totaling more than \$18.52 billion. One of the major functions of the Energy program is to determine whether an individual qualifies for Part B and/or Part E benefits. As of October 3, 2021, the Energy program had denied 42 percent of claims filed under Part B and 47 percent of claims filed under Part E. This audit will determine the extent to which the program ensured denied claims followed appropriate guidelines.

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- 51. Managing Pharmaceutical Spending in FECA – Completed.** Recent OIG audit work found OWCP had not done enough to ensure it paid the best price for prescription drugs. Specifically, the audits noted OWCP lacked a pharmacy benefits manager to help contain costs and had not determined if alternative drug pricing methodologies would be more competitive. This ongoing audit focuses on identifying the major factors influencing pharmaceutical spending in the FECA program, including any impact from the COVID-19 pandemic, and determining if OWCP effectively manages pharmaceutical spending in the FECA program.
- 52. PRAC – Telehealth Services in OWCP – Completed.** During the COVID-19 pandemic, federal health care programs used several strategies, such as telehealth services, so patients could receive medical services where needed, whether at home or elsewhere. This ongoing project with the PRAC will provide information on: the types of telehealth services available across OWCP; potential program integrity risks associated with increased telehealth utilization during the pandemic; and how the pandemic, and resulting expansion of telehealth, affected patient access for a single service type. This PRAC project is being performed in coordination with five other IGs.
- 53. OWCP Pharmacy Benefit Manager (PBM).** In March 2021, OWCP implemented a PBM responsible for pharmaceutical transactions including but not limited to eligibility determinations and pricing for prescription drugs for the FECA program. In FY 2021, FECA provided almost \$3 billion in benefits to more than 183,000 workers and survivors for work-related injuries or illnesses. This audit will focus on how effectively OWCP’s PBM reduced opioid related risks, pharmaceutical costs, and fraud.
- 54. OWCP Medical Bill Payment Processing Data Integrity Follow-Up.** In 2020, OWCP launched a new medical bill payment processing system: the Workers’ Compensation Medical Bill Processing (WCMBP) system. In 2021, we initiated an audit to assess the processes and controls over OWCP’s medical bill payment data from this system and other OWCP systems that collect, process, and share the data necessary to manage the workers’ compensation programs. OWCP was unable to demonstrate the design and effectiveness of its controls over its medical bill payment processes. Based on this, we ended the audit and concluded OWCP’s medical bill payment data was of undetermined reliability. Since concluding our testing, OWCP has stated the issues preventing our continued testing have been remedied. As OWCP, its programs, and its stakeholders rely on accurate and complete data from this and other OWCP systems, we decided to follow up on our recommendations and complete our data reliability testing. This audit will assess OWCP’s processes and controls to determine the reliability of OWCP’s medical bill payment processing data necessary to manage the Workers’ Compensation Programs.

### **VETERANS’ EMPLOYMENT AND TRAINING SERVICE (VETS) Discretionary Audits**

- 55. COVID-19: VETS Jobs for Veterans State Grants (JVSG) Program.** The COVID-19 pandemic presented new challenges for VETS in its mission to prepare America’s veterans and transitioning service members for meaningful careers; provide them with employment resources and expertise;

## OIG FY 2023 Audit Workplan

protect their employment rights; and promote their employment opportunities. The JVSG program provides individualized career services to veterans with significant barriers to employment, with the maximum emphasis directed toward serving veterans who are economically or educationally disadvantaged. The program also conducts outreach to employers and business associations and engages in advocacy efforts with hiring executives to increase employment opportunities for veterans and encourage the hiring of disabled veterans. The audit will focus on how the pandemic impacted the VETS JVSG program, as well as the effectiveness of the training program during a health crisis.

### **56. COVID-19: Effectiveness of Homeless Veterans' Reintegration Program (HVRP) Grants.**

HVRP is the only federal grant to focus exclusively on competitive employment for homeless veterans. Of all VETS programs, veterans experiencing homelessness were the most difficult population to serve during the COVID-19 pandemic. Many facilities and partner agencies shut down as a result of the public health emergency. VETS also experienced challenges pivoting to and providing virtual services to this population during the pandemic. This audit will focus on the effectiveness of HVRP meeting the homeless veterans' needs, as well as VETS's oversight of the program.

## **WAGE AND HOUR DIVISION (WHD)** **Discretionary Audit**

- 57. WHD Enforcement Program.** WHD enforces laws that address more than 147.8 million workers with minimum wage, overtime pay, migrant and seasonal protections, prevailing wages on government-funded contracts, and other wage protections. To complement its enforcement efforts, WHD uses a variety of tools to help employers understand their labor responsibilities, for example, issuance of sub-regulatory guidance, compliance videos, outreach events, and the sharing of information on state and federal agency partnerships. This audit will focus on how WHD has met its enforcement requirements and leveraged its resources between compliance assistance and enforcement activities.

## **MULTI-AGENCY** **Mandatory Audits**

- 58. Charge Card Risk Assessment – Annual – In Progress.** The Government Charge Card Abuse Prevention Act of 2012 was designed to prevent recurring waste, fraud, and abuse of government charge cards, and requires agencies to implement safeguards and internal controls to reduce these risks. This audit will determine if DOL established controls over its purchase and travel card programs to prevent and detect illegal, improper, or erroneous purchases and payments.
- 59. Single Audit Compliance, Quality Control Reviews of Single Audit Reports – Annual – In Progress.** We will determine if selected independent auditors complied with the requirements of the Single Audit Act of 1984 and if there is a need for any follow up work.

## Appendices

# Acronyms and Abbreviations

ARPA	American Rescue Plan Act of 2021
California EDD	California Employment Development Department
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CIO	Chief Information Officer
DCCA Special Fund	District of Columbia Workmen's Compensation Act Special Fund
Department or DOL	U.S. Department of Labor
DOJ	U.S. Department of Justice
EBSA	Employee Benefits Security Administration
Energy	Energy Employees Occupational Illness Compensation Program
ERISA	Employment Retirement Income Security Act of 1974
ETA	Employment and Training Administration
FBI	Federal Bureau of Investigation
FECA	Federal Employees' Compensation Act
Firm	independent certified public accounting firm
FISMA	Federal Information Security Modernization Act
FLC	Foreign Labor Certification
FPUC	Federal Pandemic Unemployment Compensation
FY	Fiscal Year/fiscal year
GAO	Government Accountability Office
H-1B	visa program for workers in specialty occupations
H-2A	visa program for agricultural workers
H-2B	visa program for non-agricultural workers
HRK	Harper, Rains, Knight & Company, P.A.
IOC-2	International Organized Crime Intelligence and Operations Center
IT	information technology
KPMG	KPMG LLP
Longshore Special Fund	Longshore and Harbor Workers' Compensation Act, Special Fund
MSHA	Mine Safety and Health Administration
NIST	National Institute of Standards and Technology
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
OWCP	Office of Workers' Compensation Programs
PERM	permanent employment certification program
PEUC	Pandemic Emergency Unemployment Compensation
PII	personally identifiable information
PRAC	Pandemic Response Accountability Committee
PUA	Pandemic Unemployment Assistance
Recovery Act	American Reinvestment and Recovery Act of 2009
Secret Service	U.S. Secret Service
SWA	State Workforce Agency
Trust Fund	Black Lung Disability Trust Fund
UI	Unemployment Insurance
USPS	United States Postal Service

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